

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



76-1323

ORIGINAL

~~76-8290~~

P/S  
B

IN THE  
United States Court of Appeals  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

*Appellee,*

*against*

JACKSON D. LEONARD,

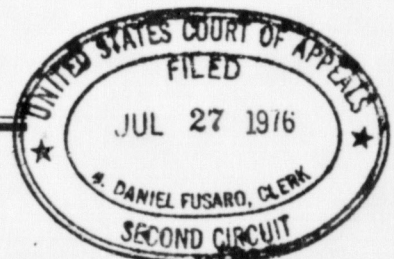
*Defendant-Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX VOLUME

WALTER, CONSTON, SCHURTMAN  
& GUMPEL, P.C.  
*Attorneys for Defendant-Appellant*  
280 Park Avenue  
New York, New York 10017  
682-2323

ROBERT FISKE  
United States Attorney for the  
Southern District of New York  
*Attorney for Appellee*  
Foley Square  
New York, New York  
791-0005



PAGINATION AS IN ORIGINAL COPY

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Docket Sheet 74 CR 599.

U. S. Form No. 100

CRIMINAL DOCKET

JUDGE OWEN 74 CR 599

## TITLE OF CASE

THE UNITED STATES

## ATTORNEYS

For U. S.:

W. Cullen MacDonald, AUSA.

264-6479

JACKSON D. LEONARD

For Defendant:

Jacob P. Lefkowitz, Esq.

150 Broadway

New York, N.Y. 10038

## ABSTRACT OF COSTS

## AMOUNT

## CASH RECEIVED AND DISBURSED

|   |  | DATE    | NAME      | RECEIVED | DISBURSED |
|---|--|---------|-----------|----------|-----------|
| 73)   |  |         |           |          |           |
| Fine,   |  | 3/1/75  | Kostelich | 5-       |           |
| Clerk, <i>li v</i>                            |  | 3/18/75 | Li v      |          | 5-        |
| Marshal,                                      |  |         |           |          |           |
| Attorney,                                     |  |         |           |          |           |
| <del>Commissioner of Correction</del> 26 & 18 |  |         |           |          |           |
| <del>Witness</del> 7205(1), 1001              |  |         |           |          |           |
| use returns regarding income tax (cts. 1&2)   |  |         |           |          |           |
| use statements (Govt. Agcy.) (Ct. 3)          |  |         |           |          |           |
| (Three Counts)                                |  |         |           |          |           |

## DATE

## PROCEEDINGS

8-74 ✓ Filed indictment.

8-74 Deft. appears (Atry. Present). Deft. pleads Not Guilty, 10 days for motion. Bail fixed by court at \$1,000 Personal Recognizance Bond. Bail limits ex- and World Wide. Deft. to notify U.S. Attorney by letter when he is leaving the Country. Country he is going to, adress he is staying at, and dates he will be out of the United States. Deft. ordered Fingerprinted and photographed. Ward, J.

8-74 ✓ Filed unsecured P.R.B. in the amount of \$1,000.00 acknowledged by the Clerk.

8-74 ✓ Filed Notice of Appearance of Jacob P. Lefkowitz.

## Docket Sheet 74 CR 599.

| DATE     | PROCEEDINGS   | CLERK'S FEES |           |
|----------|---|--------------|-----------|
|          |   | PLAINTIFF    | DEFENDANT |
| 7-11-74  | ✓ Filed Deft's. affirmation and notice of pre-trial motions for discovery and inspection, Brady material, dismiss the indictment, etc., ret. 8-16-74.   |              |           |
| 7-11-74  | ✓ Filed Deft's memorandum of law in support of pre-trial motion dtd. 7-11-74.   |              |           |
| 7-26-74  | ✓ Filed Govt's. notice of readiness for trial after 9-14-74.  |              |           |
| 8-29-74  | Filed MEMO ENDORSED on deft's. motion dated 7-11-74. The motion is denied and granted as indicated.....Owen, J. (mailed notice)   |              |           |
| 9-3-74   | ✓ Filed Govt's. bill of particulars.  |              |           |
| 9-3-74   | ✓ Filed Govt's. affidavit in opposition to deft's. motion dated 7-11-74.  |              |           |
| 9-3-74   | ✓ Filed Govt's. memorandum on pre-trial motions.  |              |           |
| 11-22-74 | Trial set for January 6, 1975, at 10:00 A.M.....Owen, J.  |              |           |
| 12-5-74  | ✓ Filed Govt's. affidavit & ORDER TO SHOW CAUSE for enforcement of subpoena duces tecum dated 9-27-74 directed to the Leonard Process Co. Inc., ret. 11-22-74....Owen, J.                                   |              |           |
| 12-5-74  | Filed MEMO ENDORSED on Order to Show Cause filed 12-5-74. Motion decided in accordance with the minutes of 11-22-74. SO ORDERED.....Owen, J. (mailed notice).   |              |           |
| 1-14-75  | Filed Judge Owen's notice to the appropriate Judicial Authority in London, England for the return of the material witness.  |              |           |
| 1-13-75  | Deft. present w/att'y. (John J. Tigus) for trial. Jury empanelled & sworn. Trial began.   |              |           |
| 1-14-75  | Trial continued.  |              |           |
| 1-15-75  | Trial continued.  |              |           |
| 1-16-75  | Trial continued.  |              |           |
| 1-17-75  | Trial continued.  |              |           |
| 1-20-75  | Trial continued.  |              |           |
| 1-21-75  | Trial continued. Verdict guilty both counts. Pre-sentence investigation ordered. Sentence date March 7, 1975 at 2:15 P.M. Deft. to surrender passport. Bail \$10,000 continental United States.....Owen, J. |              |           |

## Docket Sheet 74 CR 599.

DC-110 (Rev. 1-1-74) Docket Continuation

INVESTIGATION

1-23-75 Filed envelope containing Grand Jury Report. Sent by Court of Crim. to be opened by Court of Appeals and returned. (Placed in vault in Room 602)

1-24-75 Filed envelope sealed by Court of Crim. to be opened by Court of Appeals and returned. (Placed in vault in Room 602)

1-28-75 Filed envelope sealed by Court of Crim. to be opened by Court of Appeals and returned. (Placed in vault in Room 602)

2-3-75 Filed deft's. pre-arrest requests to charge.

2-3-75 Filed deft's. affidavit: a notice of motion for leave to inspect defendant's voice and examine handwriting.

2-3-75 Filed Govt's. responsive affidavit in opposition to deft's. motion to examine the handwriting.

2-3-75 Filed Govt's. affidavit by John Allen.

2-3-75 Filed Govt's. affidavit by Joseph J. Virginia.

2-3-75 Filed Govt's. affidavit by Robert Schuman.

2-3-75 Filed Govt's. affidavit by Herman Levy.

2-3-75 Filed Govt's. affidavit by Bernard M. Singer.

2-3-75 Filed Govt's. memorandum of law.

2-3-75 Filed deft's. memorandum of law.

2-3-75 Filed Govt's. supplemental bill of particulars, dated 10-29-74.

2-3-75 Filed Govt's. supplemental bill of particulars, dated 11-23-74.

2-3-75 Filed Govt's. proposed examination of prospective jurors.

2-3-75 Filed deft's. proposed examination of prospective jurors.

2-3-75 Filed deft's. supplemental requests to charge.

2-3-75 Filed Govt's. requests to charge.

2-7-75 Trial Adj. Until 1/13/75 @ 10:00 A.M. Open J.

2-3-75 Filed deft's. memorandum of law requesting that rule of Campbell v. United States be enforced as to Govt. witnesses.

2-8-75 Court 3 of Indict. is Dismissed on motion of Gov't. & consent of court. Open J.

2-6-75 Filed Transcript of Record of Proceedings of Jan. 20, 1975

2-6-75 Filed Transcript of Record of Proceedings of Jan. 7, 8, 1975

2-6-75 Filed Transcript of Record of Proceedings of Jan. 13, 14, 15, 16, 1975

Continued on pg. 4.

## Docket Sheet 74 CR 599.

74 Cr. 599

Pg#4

14 Cr. 599

| DATE       | PROCEEDINGS  | Date<br>Judge |
|------------|--|---------------|
| 3-7-75     | ✓ Filed Judgment & Commitment (Atty. Present) The Deft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of Eighteen (18) Months on each of counts 1 and 2 to run CONCURRENTLY with each other. Pursuant to T.18 USC Sec 3551, the deft. will be confined to a jail type institution for a period of Three (3) Months. The Execution of the remainder of the sentence is SUSPENDED & the deft. is placed on UNSUPERVISED probation for a period of Fifteen (15) Months, to commence upon release from confinement. Deft. is fined the sum of \$5,000.00 each counts 1 & 2, for a total fine of \$10,000.00. Pursuant to T.28 USC 1918 the deft. shall pay the assessed costs of prosecution, the amount of which is to be determined by law. Sentence is STAYED pending appeal. Given J |               |
| 3-11-75    | Issued Commitment.   |               |
| 3-10-75    | ✓ Filed Deft's. affidavit & notice of motion for judgment of acquittal and a new trial, ret. 3-7-75. Motion disposed of in accordance with the minutes of March 7, 1975.   |               |
| 3-12-75    | ✓ Filed affidavit of Arnold Reiner, dated 1-24-75.   |               |
| 3-12-75    | ✓ Filed affidavit of Jerry Sussman, dated 1-27-75.   |               |
| 3-12-75    | ✓ Filed affidavit of Mortimer Laski.   |               |
| 3-11-75    | ✓ Filed transcript of record of proceedings dated 1-3-75.  |               |
| 3-11-75    | ✓ Filed transcript of record of proceedings dated 1-21-75.   |               |
| 3-13-75    | ✓ Filed deft's. notice of appeal from the final judgment entered on 3-7-75. Mailed notice to Jackson D. Leonard, 37 West 37th St. N.Y.C. & U.S. Attorney's Office.   |               |
| 4-14-75    | ✓ Filed notice of certification & transmittal of the record on appeal to the U.S.C.A.  |               |
| 4-17-75    | <i>Filed stipulation per schedule to record on appeal</i>  |               |
| 4-25-75    | ✓ Filed Govt's. memorandum of law in support of motion to require assurance that the fine will be paid.  |               |
| 4-28-75    | ✓ Filed Govt's. affidavit & notice of motion to require deposit of fines or posting of bond pending appeal, ret. 5-16-75.  |               |
|            | Filed  |               |
| May 1-75   | Deposition of Joseph J. Tragna and continued deposition of Robert Schulman.  |               |
| May 1-1975 | Filed deposition of Mortimer Laski.  |               |
| May 6-75   | ✓ Filed notice of certification & transmittal of the supplemental record on appeal.  |               |
| May 1-75   | Filed transcript of record of proceedings dtd: March 7-75.   |               |
| 5-30-75    | ✓ Filed notice of certification & transmittal of the supplemental record on appeal to the U.S.C.A.   |               |
| 7-07-75    | ✓ Filed Pltiff's Supplemental Affidavit in support of motion pursuant to Rule 33(a) FRCP.  |               |

## Docket Sheet 74 CR 599.

74 cr. 599

OWEN J.

74 cr. 599

page 5

D. C. 119 Rev. Civil Docket Continuation

| DATE      | PROCEEDINGS  | Date<br>Judges |
|-----------|--|----------------|
| 7-25-75 ✓ | Filed stipulation designating exhibits to be transmitted to U.S.C.A. / Signed by Judge Conner on July 24-75. Exhibits transmitted: (1) Subpoena Duces Tecum (ex A) which was served on District Director of IRS in N.Y. on Jan 2-75 and (2) Subpoena Duces Tecum (ex B) which was served on Secty. of State Swiss Desk, Dept. of State, Washington D.C. on Jan 8-75. |                |
| 7-28-75 ✓ | Filed notice of certification & transmittal of the second supplemental record on appeal to the U.S.C.A.  |                |
| 8-28-75 ✓ | Filed MEMO ENDORSED on Govt's. motion to require deposit of fine. Motion Denied.....Owen, J. (mailed notice)   |                |
| 10-3-75 ✓ | Filed notice of certification & transmittal of the 4th Supplemental Record on appeal to the U.S.C.A.   |                |
| 11-76 ✓   | Filed True Copy of Supreme Ct. of U.S. Mandate: Petition Denied.<br>(mailed notice)  |                |
| 12-76 ✓   | Filed True Copy of USCA Mandate/ Judgment of District Court is affirmed. Judgment Entered 5/12/76 Ent. 5/18/76 (mailed notice)<br>& Copy of Opinion  |                |
| 11-76 ✓   | Filed Dfts. Notice of Motion for an order for New Trial. Ret. 6/24/76  |                |
| 11-76 ✓   | Filed Dfts. Memorandum of Law in support of motion for New Trial.  |                |
| 1-5-76 ✓  | Filed Govt's affidavit in opposition to motion for new trial   |                |
| 1-76 ✓    | Filed Dfts. Reply affidavit in support of motion for a new trial as indicated.   |                |
| 2-4-76    | Motion for New Trial is denied....Owen J.  |                |
| 3-30-76 ✓ | Filed Dfts. Notice of Appeal from Order denying motion for new trial. (mailed notice)  |                |
| 2-76      | Filed Memo. End. on motion dtd. 6/11/76. Motion denied. Owen J.<br>(mailed notice)   |                |

## Indictment.

## The Grand Jury charges:

On or about the 15th day of June, 1968, in the Southern District of New York, Jackson D. Leonard, the defendant, unlawfully, wilfully, and knowingly did make and subscribe a United States Individual Income Tax Return, Form 1040, for the calendar year 1967, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, and which he did not believe to be true and correct as a material matter, to wit: the omission of \$24,168.09 from his reported 1967 adjusted gross income of \$259,051.97 before deductions.

(Title 26, United States Code Section 7206(1)).

## COUNT TWO

## The Grand Jury further charges:

On or about the 18th day of August, 1969, in the Southern District of New York, Jackson D. Leonard, the defendant, unlawfully, wilfully and knowingly did make and subscribe a United States Individual Income Tax Return, Form 1040, for the calendar year 1968, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, and which he did not believe to be true and correct as to a material matter, to wit: the omission of \$58,684.42 from his reported 1968 adjusted gross income of \$134,276.00 before deductions.

(Title 26, United States Code, Section 7206(1)).

7a

*Indictment.*

COUNT THREE

The Grand Jury further charges:

On or about the 1st day of May, 1970, in the Southern District of New York, Jackson D. Leonard, the defendant, unlawfully, wilfully and knowingly did, in a matter within the jurisdiction of a department and agency of the United States, to wit: an audit of the defendant's 1967 return by the Internal Revenue Service of the Treasury Department, make and use a false, fictitious and fraudulent statement and representation, and a false writing and document knowing the same to contain a false, fictitious, and fraudulent statement and entry, to wit: the omissions of payments received for a 10% fee to cover the costs of processing and handling subcontracts pursuant to section 3(e) of a contract between the defendant and Union Carbide Corporation made and entered into on February 20, 1967.

(Title 18, United States Code, Section 1001).

GERARD J. TREAM  
FOREMAN

PAUL J. CURRAN  
PAUL J. CURRAN  
United States Attorney

**Notice of Pre-Trial Motions.**

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affirmation of Robert A. Fried, Esq. of the office of Jacob P. Lefkowitz, the indictment previously filed herein and all of the proceedings had herein, the undersigned, on behalf of defendant Jackson Leonard, will move this Court at a Part or Term of the Court for Criminal motions at 9:30 o'clock in the forenoon of the 16th day of August, 1974 or as soon thereafter as counsel can be heard, before Hon. Richard Owen in Courtroom #1306 of the United States Courthouse, Foley Square, New York, New York, for the following pre-trial relief:

1. An order for discovery and inspection pursuant to Rule 16 of the Federal Rules of Criminal Procedure, directing the Government to permit the defendant Jackson Leonard, to inspect, copy, photograph, or subject to scientific analysis:

a. Any and all written, oral or recorded confessions, admissions, or statements of the defendant Jackson Leonard and/or copies thereof, made to the United States Attorney, agents of the Federal Bureau of investigation or any other Law enforcement officers, the existence of which is known or by the exercise of due diligence, may become known to the attorney for the Government.

b. Any and all documents, books, papers, records, tangible objects or copies thereof which were obtained from or belonging to the defendant, the existence of which is known or by the exercise of due diligence, may become known to the attorney for the Government.

c. Any and all documents, books, records or tangible objects which were obtained from any person by seizure or process, or copies thereof, which are relevant

*Notice of Pre-Trial Motions.*

or material to the case for the Government or the defense, the existence of which is known or by the exercise of due diligence, may become known to the attorney for the Government.

d. The detailed results of any examinations or analysis which has been conducted by representatives of the Government, or copies thereof, as to any of the above items and/or for the Government to produce representative samples of any of the above items, the existence of which is known or by the exercise of due diligence, may become known to the attorney for the Government, so that the defense may conduct independent examinations or analysis.

e. The names and addresses and statements of any and all witnesses known to the prosecutor.

f. The criminal records, if any, of each witness the Government intends to call at the trial.

g. Any notes, memoranda, and written statements made by any law enforcement agency during their surveillance of the defendant.

h. Full and complete transcripts of any news releases, press statements or conferences, held by the Federal Bureau of Investigation, the United States Attorney's Office or any other law enforcement agency in connection with the arrests of the defendant, and in connection with the instant indictment, the existence of which is known or may by the exercise of due diligence, become known to the Government.

2. An order directing the Government under the authority of *Brady v. Maryland*, 373 U.S. 83, to furnish defense counsel reasonably in advance of trial, any exculpatory evidence and/or any evidence favorable to the accused, the existence of which is known or by the exercise of due

*Notice of Pre-Trial Motions.*

diligence may become known to the attorney for the Government.

3. An order directing the Government to state whether any electronic eavesdropping or wiretapping was conducted in connection with any aspect of this case:

a. If electronic eavesdropping or wiretapping has been conducted an order directing the Government to furnish the defendant with copies of any court order and application for such orders, under which said electronic eavesdropping or wiretapping were authorized.

b. If electronic eavesdropping or wiretapping has been conducted, an order directing the Government to furnish to the defendant complete transcripts of any such recorded sounds or conversations.

c. If electronic eavesdropping or wiretapping has been conducted, an order directing the Government to permit the defendant to listen to and copy any such recorded sounds or conversations.

4. An order pursuant to Rule 7(f) F.R. Crim. P., directing the United States Attorney to serve upon defense counsel a complete Bill of Particulars including the following:

**A—As to the First Count**

1. State in what manner and by what method the Government arrived at the sum of \$24,168.09 which is alleged to have been omitted from defendant's calendar year 1967 tax return.

2. If the above sum is alleged to have been received in the form of "kickbacks" state the exact times, dates, places, amounts and manner in which each such payment is alleged to have been made

3. State by whom it is alleged each payment was made.

*Notice of Pre-Trial Motions.*

B—AS TO THE SECOND COUNT

1. State in what manner and by what method the Government arrived at the sum of \$58,684.42 which is alleged to have been omitted from defendant's calendar year 1968 tax return.

2. If the above sum is alleged to have been received in the form of "kickbacks" state the exact time, dates, places, amounts and manner in which each such payment is alleged to have been made.

3. State by whom it is alleged each such payment was made.

C—AS TO COUNT THREE:

1. State the substance of the false, fictitious and fraudulent statement and representation that is alleged to have been made and used by this defendant.

2. Produce and provide for defendant a copy of the alleged false writing and document as is described within this Count.

D—

Whether any transmitting or recording, video or photographic devices were used by the Government or persons acting at its behest to monitor and/or record any conversation or transaction involving the defendant personally and with any other individual.

- i. Whether the Government intends to introduce in to evidence any information relevant to the present prosecution obtained in the above manner.
- ii. The substance of such conversation or information.

E—

A true copy of any and all grants of immunity given by any Grand Jury to any of the defendants herein or un-

*Notice of Pre-Trial Motions.*

known or other persons named in the indictment but not joined as defendants together with a statement by the prosecutor naming the statute or statutes pursuant to which such immunity was given if such citation is not contained within the verbiage used in the aforementioned grant.

5. (a) An order pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, granting inspection of the Grand Jury minutes with respect to the instant indictment or in the alternative, that the Court, in camera inspect said Grand Jury minutes and upon the Court's said inspection, dismiss the indictment as against the defendant Jackson Leonard.

(b) Pursuant to Rule 7(c) of the Federal Rules of Criminal Procedure and the Fifth and Sixth Amendments to the Constitution of the United States dismissing the instant indictment upon the grounds that the indictment is unconstitutionally vague and infirm on its face.

6. An order granting such further and additional relief as to this Court may seem just and proper.

Dated: New York, New York, July 9, 1974.

Yours, etc.,

JACOB P. LEFKOWITZ  
Attorney for Defendant  
Jackson Leonard

TO: UNITED STATES ATTORNEY  
PAUL J. CURRAN

Clerk, U. S. District Court  
Southern District of New York  
Foley Square  
New York, New York

**Affidavit of W. Cullen MacDonald, in Opposition to Motion.**

STATE OF NEW YORK  
COUNTY OF NEW YORK  
SOUTHERN DISTRICT OF NEW YORK } ss.:

W. CULLEN MACDONALD, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the offices of Paul J. Curran, United States Attorney for the Southern District of New York, and, as such, I am familiar with the above-captioned matter. This affidavit is submitted in response to motions filed by the defendant for (1) an inspection of the grand jury minutes; (2) discovery and inspection; (3) a Bill of Particulars; (4) an order concerning wire tapping; (5) an order concerning immunity granted anyone including "any of the defendants (*sic.*) herein"; and, finally, (6) an order dismissing the indictment "[p]ursuant to Rule 7(c) of the Federal Rules of Civil Procedure and the Fifth and Sixth Amendments to the Constitution."

2. On June 13, 1974, Indictment 74 Cr. 599 was filed charging the defendant with falsifying his federal income tax returns for 1967 and 1968 in violation of Section 7206(1) of Title 25, United States Code. Additionally, a third count charges false statements to the IRS auditor in violation of Section 1001 of Title 18, United States Code.

**THE MOTION TO INSPECT THE GRAND JURY MINUTES**

3. The Government opposes the motions to (1) inspect the Grand Jury minutes and, alternatively, (2) upon such inspection to "dismiss the indictment as against the defendant Jackson Leonard" (Paragraph 5(a)) for the reasons stated in the accompanying memorandum.

*Affidavit of W. Cullen MacDonald.*

THE MOTIONS FOR DISCOVERY AND INSPECTION

4. The Government consents to the production and inspection, during reasonable business hours at the offices of the United States Attorney, of the originals of all written and recorded statements and confessions made by the defendant, and copies thereof, pursuant to Rule 16(a)(1). Moreover, and subject to the defendant's agreement as outlined in paragraph 5 below, the Government consents to Discovery and Inspection of such of the defendant's oral statements as are contained in any memorandum report by a United States Attorney, agent of the Federal Bureau of Investigation and any other Law enforcement officer which purports "to produce the exact words used by" him (*United States v. Armantrout*, 278 F. Supp. 517, 518 (S.N.D.Y. 1968)). In an other respects, the Government objects on the basis that the defendant is not entitled, under the controlling authorities contained in the Government's accompanying memorandum, to the discovery sought.

5. The Government consents, subject to the defendant agreeing to the entry of a reciprocal order of equal scope, to the production and inspection, during reasonable business hours at the offices of the United States Attorney, of (a) the results and reports of physical and mental examinations and of scientific tests and experiments made in connection with this case and (b) all books, papers, documents, photographs, tangible objects, and copies and portions thereof, which are intended for use as evidence in chief at the trial. In all other respects, the Government objects on the basis that the defendant is not entitled, under the controlling authorities contained in the Government's accompanying memorandum, to the discovery sought.

*Affidavit of W. Cullen MacDonald.*

6. The Government acknowledges its obligation of disclosure under *Brady v. Maryland*, 373 U.S. 83 (1963) and consents thereto.

7. No electronic eavesdropping or wire tapping was conducted in connection with any aspect of this case. Nor were any transmitting, video tape or photographic devices used to monitor and/or record any conversation or transaction involving the defendant personally.

THE MOTION FOR A BILL OF PARTICULARS

8. The Government consents to furnishing a Bill of Particulars setting forth the particulars requested in Paragraphs 4(A) and 4(B). In all other respects, the Government objects on the basis that the defendant is not entitled, under the controlling authorities contained in the Government's accompanying memorandum, to the particulars sought.

(Sworn to by W. Cullen MacDonald, July 25, 1974.)

16a

**Endorsement.**

MICROFILM

Aug 30 1974

The within motion is disposed of as follows: Items 1(a) and (b) are granted. Items 1(c) and (d) are denied except to the extent consented to by the government. Items 1(e), (f), (g) and (h) are denied. As to item 2, no disposition is made, the government being under the continuing obligation imposed by *Brady v. Maryland*, which exists irrespective of any Court order. Item 3 is granted.

The demand for a bill of particulars (item 4) is disposed of as follows: 4A-1 and 4B-1 are granted. 4A-2 and 3 and 4B-2 and 3 are denied. 4C is granted provided that the word "exact" is deleted from demand 4C-1. 4D is denied except to the extent granted in paragraph 3 of the motion for discovery, *supra*. 4E is denied.

Finally, the relief demanded under paragraphs 5(a) and (b) is denied.

So ORDERED:

August 28, 1974.

RICHARD OWEN  
U.S.D.J.

## Affidavit of Eva Eileen Brooke.

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against-

JACKSON D. LEONARD,  
Defendant.

74 Cr. 599

AFFIDAVIT

LONDON )  
: ss.:  
ENGLAND )

RECEIVED

APR 12 1976

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

EVA EILEEN BROOKE, being duly sworn, deposes and says:  
I am a citizen and resident of England. On  
January 16, 1975 I testified as a witness for the  
Government in the case of United States of America  
v. Jackson D. Leonard, 74 Cr. 599, in Federal Court  
in Manhattan, New York City.

The circumstances of my appearing as a witness were as  
follows:

In November or December 1974, while I was in Oklahoma  
City winding up my late husband's affairs, I was  
served with a subpoena and thereafter met in New York  
with Assistant United States Attorney Cullen MacDonald,  
who interviewed me for several hours concerning  
conversations which I and my late husband had had with  
Mr Leonard. Mr MacDonald instructed me not to contact  
Mr Leonard.

*Eve Brooke*

## Affidavit of Eva Eileen Brooke.

In January 1975 I was at my home in England when I received a telephone call from Mr MacDonald telling me that he wanted me to fly to New York to testify against Mr Leonard and that he had obtained a second subpoena directing me to appear in New York as a witness.

I told Mr MacDonald that I did not wish to testify against Mr Leonard and that, as a result of the after effect of an automobile accident, I was too ill to travel.

Mr MacDonald told me that he expected me to be a "key witness" and that my testimony would be "crucial" and that, if necessary, he would furnish me with medical assistance. I repeated that I was not willing to travel to New York.

During the next few days I received several further telephone calls from Mr MacDonald insisting that I must come to New York. I understand that Mr MacDonald also called my doctors in England concerning the state of my health.

*Eve Brooke*

I continued to tell Mr MacDonald that I was not willing to fly to New York. I then received a telephone call from someone at the American Embassy in London, who

## Affidavit of Eva Eileen Brooke.

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APR 12 1976

OFFICE OF THE CLERK  
HOUSE OF REPRESENTATIVES  
SUPREME COURT, U.S.

also told me that I had to to testify and that the  
U S Government was prepared to have a nurse accompany  
me to New York.

9  
I then tried to call Mr MacDonald in New York to tell  
him once more that I was not willing to travel. I spoke  
to a man who said he was Mr MacDonald's assistant  
and that Mr MacDonald was in court. When I told this  
man that I was not willing to travel to New York, he  
became very rude and told me that if I did not come to  
New York, the United States Government would have me  
arrested in England and extradited to the United States  
as a criminal and that in the future I would never be  
allowed into the United States again.

e Brooke  
N.P.  
The next day I received a further call from Mr MacDonald  
telling me to testify. By that time I was exhausted  
from the daily pressure and terrified that if I failed  
to come to the United States, I would be subject to arrest  
and extradition.

I finally agreed to fly to New York despite the fact that  
my doctors had advised me not to travel. I was met in  
the TWA baggage area by two men who said they were from  
Mr MacDonald's office and escorted me to a car which  
took me directly to the federal courthouse where Mr MacDonald  
put me in the witness stand after again interviewing me for  
a few minutes.

RECEIVED

Affidavit of Eva Brooke.

Subsequent to my testimony, I was interviewed by  
 Mr Leonard's lawyer but did not disclose to him  
 the circumstances under which I had come to the  
 trial.

I have since learned that the threats to have  
 me arrested and extradited were false and that, as  
 and  
 a citizen/resident of England, I could not have  
 been compelled against my will to travel to New York  
 to testify against Mr Leonard.

I have been asked by Mr Leonard and his lawyers  
 to furnish this affidavit. I do so freely without  
 any threats or inducements.

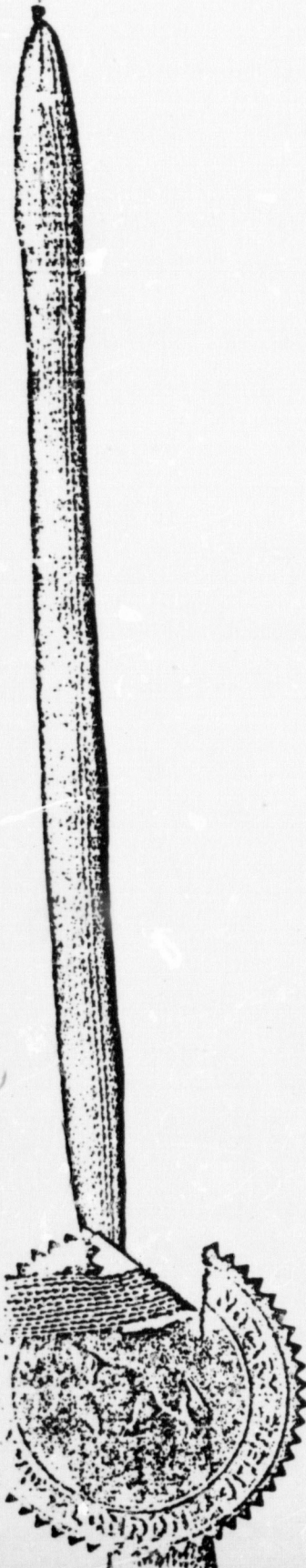
*Eva Eileen Brooke*

Eva Eileen Brooke

Sworn to before me  
 this 8th day of March, 1976.

NOTARY PUBLIC OF ENGLAND

*My commission expires with life.*



## Affidavit of Eva Eileen Brooke.

GREAT BRITAIN AND NORTHERN IRELAND )  
 LONDON, ENGLAND )  
 EMBASSY OF THE UNITED STATES OF AMERICA )

SS.

RECEIVED

APR 12 1976

OFFICE OF THE CLERK  
~~SUPREME STATES OF~~

I, ROBERT E. WATKINS, Jr. Vice Consul of the United States of America residing at London, England, duly commissioned and qualified, do hereby certify that

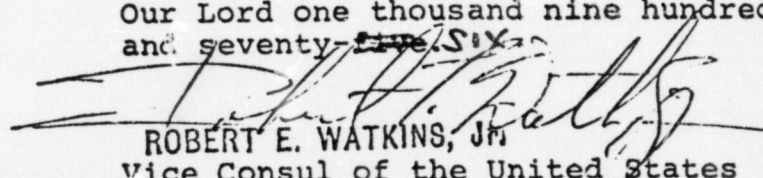
MARTIN JOHN SCANNALL

whose signature and official seal are respectively subscribed and affixed to the annexed certificate, was on the date of the signing thereof a Notary Public at London, England, duly authorized to perform notarial acts, duly appointed and qualified, to whose official acts faith and credit are due; that I have compared the signature of said

MARTIN JOHN SCANNALL

on the annexed certificate with a specimen of his signature filed in this Embassy; that I believe his signature to be genuine; that I have compared the impression of the seal affixed thereto with a specimen thereof filed in this Embassy, and that I believe the impression of the seal upon the said original annexed certificate to be genuine.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consular Service of the United States of America at London, England, this ~~Eight~~ day of March in the year of Our Lord one thousand nine hundred and seventy-five SIX.

  
 ROBERT E. WATKINS, Jr.  
 Vice Consul of the United States of America at London, England.

Service Receipt No. 60962196

Tariff Item No. 48

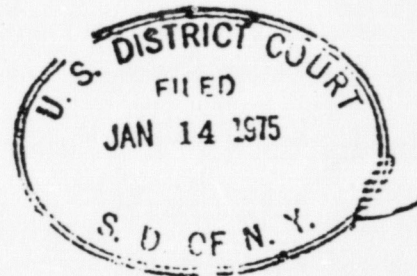
Fee: \$2.50 ~~FEES~~.

No-fee-prescribed.

Letters Rogatory to the Appropriate  
Judicial Authority in London England.

JSR.dm

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- x

UNITED STATES OF AMERICA, :

- v - :

74 Cr. 599 (RC)

JACKSON D. LEONARD, :

Defendant. :

----- x

TO: THE APPROPRIATE JUDICIAL AUTHORITY IN LONDON, ENGLAND:

The United States District Court for the Southern District of New York presents its compliments to the appropriate judicial authority in London, England, and requests its assistance in the following manner.

*reviewed by  
James J. [unclear]  
1.1.10.1.*

1. Jackson D. Leonard is presently on trial before this Court and a jury pursuant to a <sup>Two</sup>~~three~~-count criminal indictment filed against him on June 13, 1974 by a federal Grand Jury sitting in the Southern District of New York. The charges he faces all arise from the making of allegedly false and perjurious statements, in violation of United States criminal laws.

2. Specifically, he is charged, in two counts, with violation of Section 7206(1) of Title 26 of the United States

## Letters Rogatory.

MICROFILM  
JAN 14 1975

Code, which provides, in pertinent part, that:

"Any person who ... wilfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; ... shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution."

~~Further, he is charged, in a third count, with violation of~~  
Section 1001 of Title 18 of the United States Code, which provides, in pertinent part, that:

*John*  
*Handwritten*  
*101*  
"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully ... makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than ~~five years, or both.~~"

3. As the result of the testimony and documents before me in this case and the representations made by the United States Government, I have determined that one EVA BROOKE, whom the United States seeks to call as a witness in this case, is likely to be able to provide the Court and jury with testimony having a material bearing on the instant case.

## Letters Rogatory.

Specifically, I am informed by the United States that the defendant Leonard made materially incriminating statements to Ms. Brooke and that Ms. Brooke has previously admitted as much in conversations with representatives of the United States.

4. Further, I am informed by the United States that Ms. Brooke is a British citizen, but that she has resided in the United States for most of the past two or three years and has a house in Oklahoma. However, I am informed that, even though she was previously served with a subpoena requiring her attendance as a witness before this Court in this present criminal case, she is presently residing in London at an address now known to the United States Government and has resisted coming to New York in compliance with the subpoena, even though the United States has agreed to bear all her reasonable travel expenses.

5. Accordingly, it is hereby requested, if appropriate pursuant to the Foreign Tribunals Evidence Act of 1856 as construed in terms of the Extradition Act of 1870, or pursuant to other pertinent laws of the United Kingdom, that the appropriate judicial authority in London, England enter such orders as British law permits, directing EVA BROOKE to appear as soon as physically possible before the undersigned in Room 518 of the United States Courthouse, 40 Centre Street, New

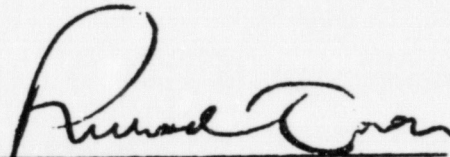
## Letters Rogatory.

York, New York to give evidence in the criminal trial now pending before this Court, and directing such other steps (such as arrest and extradition) that may be necessary in order to secure compliance with such orders.

6. This Court expresses its appreciation to the appropriate judicial authority in London, England for its courtesy and assistance in this matter.

Dated: New York, New York

January 14, 1975



RICHARD OWEN

United States District Judge

els Transcript of 6/24/76 Hearing Before  
Judge Richard Owen.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
UNITED STATES OF AMERICA, :  
:  
vs. :  
:  
JACKSON LEONARD, :  
:  
Defendant. :  
:  
-----X

Before:

HON. RICHARD OWEN,  
District Judge.

New York, June 24, 1976;  
2.50 o'clock p.m.  
(Room 301)

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,  
United States Attorney for the  
Southern District of New York;  
BY: CULLEN W. MacDONALD, Esq.,  
Assistant United States Attorney.

WALTER, CONSTON, SCHURTMAN & GUMPEL, P.C.  
Attorney for the Defendant;  
BY: JAMES SCHREIBER, Esq.,  
ALAN KANZER, Esq., of Counsel.

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1 els

2 MR. SCHREIBER: If your Honor please, my name  
3 is James Schreiber. I represent Jackson Leonard.  
4 I believe this is the first opportunity that I have had  
5 to appear before your Honor, at least on this side of the  
6 case.

7 As your Honor knows, this is a motion for a  
8 new trial on the ground of newly discovered evidence.  
9 The newly discovered evidence is that the Government  
10 coerced and threatened its main witness at trial in order  
11 to obtain his presence and testimony against Jackson Leonard  
12 and, further, that the government failed to disclose, and  
13 perhaps even concealed the existence of these threats, both  
14 from the Court and on trial.

15 I recognize that your Honor just had a motion  
16 for a new trial on the basis of newly discovered evidence,  
17 with John Martin and Jed Rakoff. I would just like, nonethe-  
18 less, to touch upon the applicable legal standards because  
19 I think they are relevant to this motion.

20 There are really three legal criteria on a motion  
21 for new trial, depending on whether there has been  
22 governmental misconduct or willful suppression, or simply  
23 inadvertent governmental suppression of evidence.

24 (continued on next page.)

25



1 els

2 Most respectfully, your Honor, it is our  
3 considered judgment that there is substantial evidence of  
4 governmental misconduct, which case the lowest standard  
5 would be applicable, namely that the evidence must merely  
6 be material or favorable to the defendant's side. Their  
7 evidence namely are threats to Eva Brooke --

8 THE COURT: Let me stop you for a minute because  
9 I read these papers last night and this morning for a few  
10 minutes, and I just want to clarify a number of things.

11 In looking through here I recall signing this  
12 extradition or whatever you want to call it paper.

13 MR. SCHREIBER: Called a letter rogatory.

14 THE COURT: Whatever it is called. I see  
15 here that the words that you are asking, London, England  
16 judicial authority to take such steps such as arrest and  
17 extradition as are necessary. That is what it says  
18 in these letters, as you call them.

19 It is clear, is it not, that Mrs. Brooke had  
20 been in this country and was lawfully served with a  
21 subpoena directing her to appear?

22 She was where, Oklahoma or New York or some-  
23 where?

24 Mr. MacDonald, was it --

25 MR. MacDONALD: I can enlighten your Honor.

1           els                           Transcript of Hearing.

2       She was served with a trial subpoena in Oklahoma and it  
3       may be, I think we were having a succession of continued  
4       trial dates, that I served her again with a second trial  
5       subpoena on the occasion of her interview in my office in  
6       New York City.

7                   THE COURT:   In any event, they have a lady  
8       who's been served with one if not two subpoenas commanding  
9       her appearance, and the next day the prosecutor finds  
10      out, she is in England and he gets me to sign a piece of  
11      paper, you say there was no authority for "arrest and  
12      extradition," but do you claim that it is improper for the  
13      prosecutor to express some minimal sense of outrage at  
14      a witness who's been subpoenaed and has gone where she  
15      may feel that she cannot be required to respond to that  
16      subpoena?       And if he says, lady, I have got a piece  
17      of paper out here calling for arrest and extradition, I  
18      have a subpoena for you, I served it on you, I paid the  
19      fee, why weren't you here?       I am going to do every-  
20      thing to get you here.       Is that coercion?

21                   MR. SCHREIBER:   I have asked two questions, your  
22      Honor, maybe more.       I would like to respond to them one  
23      at a time.

24                   I was a prosecutor at one time and I felt  
25      outraged if a witness did not respond to a subpoena.

1 els

Transcript of Hearing.

2 It's one thing to feel an emotion. It's quite another  
3 thing to act on that emotion and to make threats that,  
4 No. 1, one cannot fulfill because there is no authority.  
5 It's another thing to make threats to a witness who is  
6 vulnerable, who is likely to be terrorized, as this woman  
7 was and not disclose to defense counsel the fact that a  
8 woman had to be coerced, and I don't use that term lightly,  
9 into testifying for the Government.

10 But she doesn't say that she testified to anything  
11 that wasn't true.

12 MR. SCHREIBER: That is a fact entirely accurate,  
13 your Honor. The fact is, though, your Honor, that the  
14 jury did not know the frightened circumstances from her  
15 point of view under which she was testifying. It's our  
16 position and I believe it is conceded by the Government  
17 that she was the critical witness to this trial, given  
18 the dynamics of the trial and if your Honor may recall,  
19 Mr. Tigue, who was trial counsel tried to undermine her  
20 credibility. Because Jackson Leonard disputed the  
21 accuracy and still disputes the accuracy of her testimony.

22 It is our position that there is no way of  
23 knowing, first of all, what the jury would have done if  
24 they had heard her say as she said in her affidavit which  
25 we recently obtained, that she came here because she was

1 els

2 terrorized that the U. S. Government was going to arrest  
3 and extradite her from England unless she came. And  
4 she said she was so frightened, apparently that she didn't  
5 reveal these circumstances to defense counsel.

6 THE COURT: Mr. Tighe never asked her the right  
7 questions, as I read his evidence. I said how come you  
8 are here, and she said I am subpoenaed.

9 MR. SCHREIBER: He said how did you come to be  
10 here, and --

11 THE COURT: And she said, "I was subpoenaed."  
12 And the Government paid her air fare from London.

13 MR. SCHREIBER: Mr. Tighe had no way of knowing  
14 that she had been the subject of improper threats and  
15 coercion. That resulted partly because the letter  
16 rogatory we submit didn't have the authority to do what  
17 it sought to do, was obtained ex parte without Mr. Tighe's  
18 participation. If she had been there and had been  
19 able to be heard he might have expressed an opinion as to  
20 the propriety --

21 THE COURT: What right does Mr. Tighe have in  
22 obtaining a witness for the prosecution? If the Govern-  
23 ment wants to serve a subpoena on the man down the street  
24 during the course of the trial it doesn't have to go  
25 to defense counsel and say, "Let's talk to the judge while

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Transcript of Hearing.

2 I find out if I can serve a subpoena."

3 MR. SCHREIBER: I agree with that. But the  
4 letter rogatory is something that you have to go to the  
5 judge and say, "Judge, here are some facts about the  
6 case." In other words, you have to explain to the Court  
7 why you need such an extraordinary remedy. That  
8 necessarily involves ex parte discussions relating to  
9 the case.

10 THE COURT: And?

11 MR. SCHREIBER: And I think that under those  
12 circumstances, because it's not an ordinary subpoena --

13 THE COURT: Like telling the Court that they  
14 had what they regard as an important witness in Europe  
15 who had disregarded a subpoena, and would I sign a subpoena  
16 to get her here. That is not the defendant's business.

17 MR. SCHREIBER: I respectfully disagree, your  
18 Honor, because at that point the defense is being excluded  
19 from --

20 THE COURT: No, in addition to that it seems  
21 to me that the defense -- I am not making a specific rule,  
22 because it seems to me in general in a case like this  
23 where this lady was well known to Jackson Leonard, and I  
24 am not saying he would have done it, but it's certainly  
25 easy in a case like this for the defense to call Mrs.

1 els

Transcript of Hearing.

2 Brooke. I am not saying he would have done it, but it's  
3 easy to call Mrs. Brooke and say, "Eva, they are getting  
4 out papers for you, go up to the Scottish Highlands for  
5 a week or so until this thing is over." I don't credit  
6 that position at all, Mr. Schreiber.

7 MR. SCHREIBER: There is no evidence that Mr.  
8 Leonard would have done that --

9 THE COURT: I don't think the Government is  
10 required to make an assessment of whether or not he would  
11 have done it. I think it is entitled to get its  
12 witnesses here in any appropriate way. So let's go  
13 to the appropriate way, and it can do that ex parte  
14 without bringing you into the proceedings to get them  
15 here.

16 MR. SCHREIBER: Let us focus then on what is  
17 appropriate. The witness is a foreign witness living  
18 in London --

19 THE COURT: She was very bright, very, very  
20 bright woman who is the widow of a former oil company  
21 executive, a very bright woman.

22 MR. SCHREIBER: That is correct. She was a  
23 very frightened woman, by the way.

24 THE COURT: My personal assessment, and this  
25 doesn't have any bearing on the outcome of the case, but

1' els

## Transcript of Hearing.

2 my personal assessment is that she was very distressed  
3 to have to get on the stand and relate a conversation in  
4 a hotel room which would be damaging to a man that her  
5 husband had had social dealings with. I don't think  
6 she was frightened, I think she wished she were any place  
7 but here. That was my personal view.

8 MR. SCHREIBER: If your Honor please, I suspect  
9 that that is a view --

10 THE COURT: I don't think she was frightened  
11 at all. This was a very bright woman who just didn't  
12 want to be there, that's all.

13 MR. SCHREIBER: I suspect that your Honor's  
14 view is based partly on the fact that you didn't know of  
15 the pressure, and threats and coercion that the Government  
16 applied to her.

17 THE COURT: I talked to her because I remember  
18 Mr. Tighe wanted to speak with her, and I remember having  
19 a little chat with her in which I said, Mrs. Brooke, the  
20 law does not require you to speak with anybody you don't  
21 want to speak with, but Mr. Tighe for Mr. Leonard would  
22 like to speak to you. If you want to talk to him, you  
23 may. If you don't want to, you don't have to.

24 I had a very intelligent response, and she said  
25 something like, I would prefer to, or I want to, or something

1       els  
2       of that kind.     I didn't get any feeling of hesitancy  
3       or fear.     I just got a feeling of regret and discomfort.  
4       Let's assume that an Assistant said to her over the phone,  
5       we can have you arrested or extradited, therefore you  
6       get yourself back over here like you should have done with  
7       the subpoena we served on you at least once.     How does  
8       that affect you absent a showing she would have testified  
9       to something differently?

10               (Continued on next page.)

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## Transcript of Hearing.

MR. SCHREIBER: First of all, your Honor, the cross-examination fails to disclose, as the affidavit does, that she was terrorized by a series of telephone conversations. She actually uses the word "terrorize," your Honor, and I never have seen Mrs. Brooke, I never talked to her, but your Honor is correct, that the woman is bright and well spoken.

I assume that she chooses her words carefully. The use of the word, "terror -- terrorize" implies to me tremendous fear, and those are the circumstances under which she was testifying.

Mr. Tighe assumes that the circumstances were quite different and, therefore, when he cross-examined her, he was focusing on her possibly having been influenced by Kerr McKee, who Jackson Leonard had sued for many millions of dollars for improperly using chemical designs for substantial chemical plants that he had invented himself.

As your Honor may recall, she was on pension from Kerr McKee, and Mr. Tighe, I believe, subpoenaed the attorney for Kerr McKee in that civil litigation, he subpoenaed the bank accounts out in Oklahoma City. He subpoenaed drafts of affidavits which she had supplied to Kerr McKee's lawyers.

## Transcript of Hearing.

13

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The whole focus of the cross-examination on what the Government concedes is a critical witness was way off. No one knew -- when I say no one knew, Mr. Tighe didn't know -- she was frightened to death. She was terrorized.

THE COURT: Using the word, "terrorized," she kept getting daily calls by people subpoenaing her, and therefore, had a right to have her here. And the last day she said, "I was exhausted from the daily pressure and terrified that if I failed to come to the United States I would be subject to arrest and extradition."

That is what she said.

Now, that doesn't mean she was terrorized when she was sitting on the stand. That means when she is in England she is afraid there is going to be a proceeding brought against her and they are going to have a constable come around and pick her up and take her before a British judge who is going to say, "We have these letters rogatory and, madam, you are on the next BOAC plane to New York."

MR. SCHREIBER: Using the letters rogatory in conversations with the person she said was the Assistant to Mr. MacDonald.

THE COURT: She says if she does not come,

## Transcript of Hearing.

14

1 jws

2 "They will have me extradited to the United States and  
3 in the future I will never be allowed in the United States  
4 again."

5 MR. SCHREIBER: Whom do you extradite?

6 Criminals, people guilty of wrongdoing.

7 THE COURT: You serve a subpoena to someone on  
8 42nd Street and the Marshal says, "Mr. Jones, the judge  
9 says you should come down to the court."

10 What is that? That is the same thing, isn't  
11 it?

12 MR. SCHREIBER: You are dealing here with a  
13 widow whom an Assistant used the word "arrest" with, not  
14 "subpoena," but "arrest."

15 "Arrest" carries to me as a lawyer -- and I am  
16 sure to the layman -- handcuffs, jail, extradition.  
17 Can you imagine an innocent person being told by a  
18 Government official, "If you don't come over from your  
19 country we are going to have you arrested and extradited"?

20 THE COURT: She left under subpoena from our  
21 court.

22 MR. SCHREIBER: It depends whether that is  
23 enforceable. It is certainly not enforceable by  
24 threats.

25 THE COURT: How does that affect the outcome

1 jws Transcript of Hearing.  
2 of this trial, the failure to say she was arguably  
3 pressured here in response to a subpoena which she ought  
4 not to have honored in the first place? How does that  
5 affect the outcome of this case?

6 MR. SCHREIBER: First of all, your Honor, in  
7 her affidavit she recounts a conversation which she  
8 alleges took place with Mr. MacDonald, in which, according  
9 to her, Mr. MacDonald told her, No. 1, she was the key  
10 witness, or a key witness and, two, her testimony was  
11 crucial or critical, using Mr. MacDonald's words, I  
12 believe. Mr. MacDonald doesn't dispute that.

13 THE COURT: I am sure he doesn't. Maybe I  
14 better not speak for Mr. MacDonald. It doesn't seem to  
15 me there is any need to. He also said, "I will give  
16 you medical assistance."

17 MR. SCHREIBER: The point is this:

18 This woman said she was terrorized by these  
19 threats. I think we have to assume it is not disputed.  
20 The critical testimony, the keystone in the Government's  
21 case, if you would, comes over here and testifies defense  
22 counsel is about knowledge of those circumstances.

23 I am not in a position to say, your Honor, that  
24 had those facts been disclosed to the jury that the jury  
25 wouldn't have reached a different result. But that

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is not the standard, your Honor, applicable.

THE COURT: You mean they would have disbelieved her testimony?

MR. SCHREIBER: They may have, your Honor.

Let me tell you the scenario that may have happened. It may have happened that she told a story to Mr. MacDonald that wasn't true. I don't know this to be a fact. I am assuming a hypothetical.

THE COURT: She had the notes, as I remember.

MR. SCHREIBER: Yes, your Honor, and not one of those notes included any reference to the conversation with Jackson Leonard that he had a Swiss bank account.

As your Honor may recall, Mr. Tigue hammered that point and his point was, "Look, your own notes don't say anything about him having a Swiss bank account, but the affidavit of Kerr McKee did."

The point I am making is if Eva Brooke gave an accurate statement to Cullen MacDonald and then turned around and said, "Oh, my God, I landed in New York, safe at least, and all of a sudden Mr. MacDonald, or his Assistant, gets on the phone and says 'You are coming over here,' after having been arrested and extradited, 'because you are a key witness with crucial testimony,'" and under those circumstances she comes over and repeats what she

## Transcript of Hearing.

17

1 jws

2 said to Mr. MacDonald, have we any assurance -- well,  
3 first of all --

4 THE COURT: That is all speculation. She  
5 doesn't say a word in her affidavit that she said anything  
6 that wasn't true.

2 7 MR. SCHREIBER: But, your Honor has a copy of  
8 her testimony, at least a portion of it which I cited in  
9 our reply affidavit to the effect that the reason she came  
10 here was -- this is her testimony on cross-examination --  
11 because she was subpoenaed. That's not why she came,  
12 according to her affidavit that came subsequently. She  
13 said she was terrorized.

14 THE COURT: Mr. Schreiber, let me hear from  
15 Mr. MacDonald.

16 MR. SCHREIBER: Your Honor, I would just like  
17 to draw your attention to a case we have not cited inadvert-  
18 ently. I believe it is fairly on point. It is the  
19 case of U. S. v. Miller, 411 Fed. 2d 825, Second Circuit,  
20 1959. And if your Honor would permit me two minutes, I  
21 would just like to tell you the facts.

22 THE COURT: Very well.

23 MR. SCHREIBER: This is the case in which a  
24 significant witness in a narcotics case had been hypnotized  
25 by the prosecution to try to get him to recall a license

1 JWS Transcript of Hearing.

2 plate number on the car connected with the delivery of  
3 some drugs. And the hypnotist failed -- he wasn't  
4 able to recall the license plate number.

5 The Government called him as a witness to testify  
6 and the defendant was convicted. The Government failed  
7 to disclose that it had hypnotized him to get this inform-  
8 ation.

9 Judge Friendly said that was the type of  
10 information which, if known by experienced and skilled  
11 defense counsel, could have been effectively exploited  
12 and it could have been used to impair the credibility of  
13 that witness.

14 Now, our position is that if Mr. Tighe, whom  
15 your Honor obviously knows is a highly competent and skilled  
16 trial counsel, knows that Mrs. Brooke believed she had been  
17 threatened and was here under circumstances that she  
18 believed were threatening to her that he would have used  
19 that effectively and may very well have succeeded perhaps  
20 in bringing about an acquittal, and very possibly maybe  
21 even a hung jury.

22 And it is our position that the lowest standard  
23 applies here, namely that there were threats. The  
24 Government doesn't dispute that there were threats.  
25 Under those circumstances the lowest standard is applicable,

1 jws

2 namely that which can only be favorable or not to the  
3 defense side.

4 THE COURT: Yes, sir.

5 (Continued on next page.)  
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## Transcript of Hearing.

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MR. MacDONALD: Your Hono, I am sorry that the papers don't. on their face, erect multiple hurdles so that each of these allegations are met. However, I have a certain reluctance in answer to a motion as this motion first was presented to meet these allegations of governmental misconduct which appear only in a brief and not in the affidavit of the witness. It was only in the brief that it was stated that the Government never intended to present to the Chief Judge in London the papers which we obtained your Honor's signature on and there was no evidentiary support and it was, in my view, unnecessary to make affidavits that we don't obtain process from the Southern District judges and not intend to employ those processes in a proper fashion.

In a similar vein, to recount a series of several phone conversations that I had in which by happenstance Mr. Rakoff had while I was in the courtroom in answer to what on its face is a perfectly appropriate statement to a witness who is threatening to be disobedient and threatening to permit a crime and that disobedience obstructing the process of the Court and refusing to submit to what her duty was is an unnecessary imposition and just further clutters the paper record in this case.

The identical allegations about abuse of the

1 jqs Transcript of Hearing.

2 process of the Court were presented to Judge Friendly in  
3 Mr. Leonard's brief on appeal and they were rejected in  
4 a two-line last paragraph by Judge Friendly and I think  
5 the identical affidavit of Mrs. Brooke was submitted to  
6 the Supreme Court.

7 I agree certainly denial doesn't mean very much.  
8 Factually without unfairly bringing into play at this stage  
9 my representations which are not capable of being cross-  
10 examined, and I suppose if your Honor requires it I should  
11 be prepared to subject myself to that --

12 MR. SCHREIBER: If your Honor please, and I 'am  
13 sorry to interrupt, I don't mean to be rude. If. Mr.  
14 MacDonald is going to make factual representations to the  
15 Court --

16 THE COURT: Don't do that, Mr. MacDonald.  
17 You ought <sup>not</sup> to supplement the record.  
18 ^

18 MR. MacDONALD: The papers are deficient in  
19 several respects. For example, the duty on movant to  
20 prove foreign law is set forth, I believe, in both the  
21 Federal Rules of Civil and Criminal Procedures and there  
22 is no showing, no factual assertion that the British  
23 treaty relationships with this country would not have  
24 caused her to be extradited and arrested in response to  
25 this Court's request.

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## Transcript of Hearing.

1 A perfectly proper process and I think on the  
2 record here the movant has failed to show any impropriety  
3 whatsoever in the process.

4 The movant has failed to show governmental  
5 intention to the Courts for whatever lawful import the  
6 procedure establishes and that part of the brief at least  
7 is not proven.

8 Part of the same thing is the alleged purpose  
9 to deliver it to her personally and to avoid the intervention  
10 of the British courts. Mr. Tigue's affidavit, which was  
11 served yesterday, establishes, and your Honor does recall  
12 accurately, that Mrs. Brooke agreed to submit to an inter-  
13 view in the overnight recess and your Honor further  
14 recalls accurately that she produced to Mr. Tigue during  
15 that interview drafts of an affidavit which she had not  
16 previously produced to the Government and those additional  
17 documents supplemented the 3500 material and after over-  
18 night here in the New York hotel room she came back on  
19 cross-examination and she was not terrified, but she was  
20 telling the story she remembered and she explain away what-  
21 ever consistencies or inconsistencies existed in those  
22 documents.

23 I think it's an insufficient response by  
24 Mr. Tigue that he asked the precise question he did when  
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1 jqs  
2 afforded the complete opportunity to go through the papers  
3 and ask her all about the circumstances under which she  
4 flew in from England at 2 o'clock in the afternoon when  
5 she got on the witness stand at 3 o'clock.

6 Factually the motion is deficient in that one  
7 respect and that is an adequate showing of diligence or  
8 failure of diligence to explain the non-discovery of the  
9 evidence and that was the point to which our papers were  
10 directed and we would hope that we would not be required to  
11 go beyond that inadequate showing in factually defending  
12 this motion.

13 Unless your Honor has any questions I think that  
14 we would stand on the record as it now stands and submit  
15 that the matter really is not grounds for a new trial and  
16 that Mr. Leonard should begin service of his sentence  
17 next Monday as it's currently scheduled.

18 THE COURT: Mr. Schreiber, do you wish to respond  
19 briefly?

20 MR. SCHREIBER: Yes, your Honor, I do, and then  
21 I have a motion with respect to that surrender time as well  
22 as another part of the sentence.

23 First of all, your Honor, I don't believe that  
24 Mr. MacDonald has accurately stated our position. Our  
25 position here is not as it was in the Court of Appeals that

## Transcript of Hearing.

jqs

1 we suspected that the Government had improperly used a  
2 letter rogatory. That was our position before. Now  
3 we have her affidavit which says nothing about a letter  
4 rogatory. It says explicitly that she was threatened.

5 In other words, we are not in a situation that  
6 we are drawing inferences from the letter rogatory that we  
7 first discovered on appeal and Mr. MacDonald filed it.  
8 What we are saying is that your Honor has something that  
9 the Court of Appeals didn't have.

10 In other words, the Court of Appeals had our  
11 inferences or conclusions that we drew from the letter  
12 rogatory and the unusual language in that letter rogatory,  
13 namely arrest and extradition, the fact that she resisted  
14 coming here.

15 What the Court of Appeals didn't have you now  
16 have, namely explicit statements that she was coerced.

17 With respect to the due diligence aspect, your  
18 Honor, I believe the cases when they talk about governmental  
19 misconduct or wilfull suppression or even inadvertent or  
20 negligent suppression don't talk about due diligence  
21 at all. Due diligence is only applicable in a case  
22 where there is a pure situaation of newly discovered  
23 evidence. So we submit, No. 1, there was due diligence.

24 In fact, Mrs. Brooke says in her original  
25

1 jqs  
2 affidavit although she was interviewed by Mr. Tigue,  
3 by Mr. Leonard's lawyer, "I did not disclose to him the  
4 circumstances under which I come to trial." That was  
5 exactly what Mr. Leonard says. Really what Mr. Tigue  
6 says.

7 What we are saying is that the threats were  
8 so successful, your Honor, that she was afraid to disclose  
9 the circumstances under which she came to trial. There-  
10 fore, how can you require due diligence, namely defense  
11 counsel to pry facts out of a witness where the witness  
12 is so afraid that she won't tell him.

13 THE COURT: How can you argue that when she  
14 gave him statements? She gave him an affidavit she  
15 hadn't given to the Government.

16 MR. SCHREIBER: She was subpoenaed to produce  
17 those.

2 18 THE COURT: This was a voluntary meeting on her  
19 part with Mr. Tigue at the end of the day and Mr. MacDonald  
20 refreshes my recollection that she gave him an affidavit  
21 that was an unsigned affidavit that had been drafted  
22 and she hadn't even shown the prosecutor.

23 MR. MacDONALD: Your Honor, may I also recall  
24 that I was excluded from the interview. It occurred  
25 out of my presence.

## Transcript of Hearing.

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1 jqs

2 THE COURT: I don't understand that. Right.

3 MR. SCHREIBER: The point is this:

4 I have a copy of the transcript in which your  
5 Honor discusses with her Mr. Tighe's request that she  
6 be interviewed. I believe that Mr. Tighe tried to talk  
7 to her and she wouldn't talk to him and he came to you  
8 to get you to direct her or to say to her that it was  
9 okay, it wasn't a violation of law.

10 THE COURT: I think that was the problem.  
11 She was a little uncertain as to what was the appropriate  
12 thing to do.

13 MR. SCHREIBER: The reason is, your Honor, that  
14 in her affidavit she says, when she talked to Mr.  
15 MacDonald in New York in December, and I want to quote:

16 "Mr. MacDonald instructed me not to contact  
17 Mr. Leonard."

18 That is a quote.

19 Therefore, Mr. Tighe had to go to you to get her  
20 to talk to him in the first place, which corroborates  
21 exactly what I am saying.

22 THE COURT: And then he did.

23 MR. SCHREIBER: You said this, at page 523  
24 of our appendix, and I believe also the page of the tran-  
25 script, but I am not certain of that:

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"THE COURT        why don't you hop out now and think about what you would like to do and Mr. Tigue will presumably speak to you and you can guide yourself accordingly.        He would like obviously to discuss with you the matters that are involved in the testimony that you have given here.

"THE WITNES:    Yes, obviously.

"THE COURT:    And things related to it.

"THE WITNESS:    Yes, I would say no, I don't mind discussing it with Mr. Tigue.

"TIGUE:    Thank y ou very much.

"THE COURT:    All right."

What I am suggesting to you is that your Honor neutralized -- and I don't know for a fact, but it appears your Honor may have neutralized some of the fear that she had in talking with Mr. Tigue given the fact that she had been previously instructed by Mr. MacDonald, according to her, not to talk to Mr. Leonard and I assume that included Mr. Leonard's counsel.

If your Honor please, with respect to the surrender date, Mr. Leonard, I believe, is supposed to surrender on Monday, June 28.        Mr. Hirschberg, from my office, just came down to inform me that Mr. Leonard, who was due back Saturday, will not be due back until

1 jqs Transcript of Hearing.

2 July 6. He is in Sardinia. I have notified Mr.  
3 MacDonald of his travel plans. He has a chemical plant  
4 there which is just starting up.

5 Regardless of that situation, your Honor, I  
6 submit, most respectfully, that this motion raises sub-  
7 stantial issues. If your Honor should deny the motion  
8 for a new trial, quite frankly we would obviously take an  
9 appeal.

10 THE COURT: I understand.

11 MR. SCHREIBER: If we took that appeal I believe  
12 that we would have a chance to succeed. I think under  
13 those circumstances that it would be inappropriate, given  
14 the substantial nature of these issues, to require Mr.  
15 Leonard to surrender before we can get a final adjudica-  
16 tion.

17 I would respectfully ask, therefore, if your  
18 Honor would, to put off the surrender until two weeks  
19 after you have decided this motion so that we can go to  
20 the Court of Appeals on an expedited basis if we don't  
21 succeed before your Honor ~~to~~ have that Court determine  
22 this issue.

23 THE COURT: Let's do that.

24 Do you want to say anything more on the merits?

25 MR. SCHREIBER: I just point out, your Honor,

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## Transcript of Hearing.

1 that obviously our position is that the Court of Appeals  
2 and the Supreme Court did not consider this issue as  
3 Mr. MacDonald claims on precisely the same showing and  
4 the same arguments because we didn't have Eva Brooke's  
5 affidavit until six months after the Court of Appeals had  
6 decided the case and affirmed the conviction four months  
7 after it had denied a rehearing and we first obtained it  
8 after we had filed our petition in the Supreme court.

9 We lodged the original affidavit with the  
10 petition in the Supreme Court because it contradicted our  
11 assertion that the letter rogatory had been used.  
12 There is nothing in her affidavit. I discussed it with  
13 my partners and the judgment that we reached was that we  
14 felt we had a professional responsibility to the Court  
15 because of that contradiction to file it there because  
16 if the certiorari was granted we had to argue the appeal  
17 and it would have come out in any event.

18 Additionally, it also did corroborate our  
19 argument that she was the subject of coercion although  
20 those were inferences that we had drawn from the letter  
21 rogatory itself.

22 Just one final thing on the surrender, your  
23 Honor.

24 I received today in the mail a notice that  
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2 Mr. Leonard should pay the \$10,000 fine in this case and  
3 I would request that if your Honor is going to put off  
4 his surrender if you would also, since you have on the  
5 original sentence put off all parts of the sentence until  
6 all the appeals have been exhausted, postpone the payment  
7 of that fine.

8 Mr. Leonard obviously has substantial ties to  
9 New York. He has a business here. He has four children  
10 here. He has a wife here. He has a home in New  
11 Jersey.

12 THE COURT: I thought he was ordered to pay that  
13 sum some time back.

14 MR. SCHREIBER: If your Honor please, the  
15 Government was going to move to have him pay it. I spoke  
16 to Mr. Jupiter and I pointed out to him in the sentence  
17 your Honor said everything pending appeal. I don't know  
18 whether I persuaded Mr. Jupiter or he never got around to  
19 doing it but the Government never moved formally to have  
20 that fine paid.

21 THE COURT: All right.

22 MR. SCHREIBER: If your Honor please, Mr. Kanz  
23 my partner, reminds me that we have prepared or are in  
24 the process of preparing a motion to reduce. If your  
25 Honor sets surrender for two weeks after your decision

1 jqs

2 here if it's --

3 THE COURT: What is the basis of the motion to  
4 reduce?

5 MR. SCHREIBER: If your Honor please, the  
6 Court of Appeals in the Second Circuit articulates rules  
7 on sentencing.

8 THE COURT: Judge Friendly chided me for giving  
9 a rather light sentence in this case, as I recall.

10 MR. SCHREIBER: That is true, he did, your  
11 Honor.

12 THE COURT: If your motion is going to be based  
13 on certain standards that are applicable for me to consider  
14 then I wouldn't bother getting up the papers. If it would  
15 be based on something other than standards that you claim  
16 that I should have considered then I will consider it,  
17 but if it's only a question of standards I can tell you  
18 right now I would deny it.

19 MR. SCHREIBER: I understand that. I am  
20 fully aware of what Judge Friendly said. There are some  
21 facts that have arisen since that time which we would  
22 like to bring to your Honor's attention.

23 THE COURT: I am certainly not going to foreclose  
24 anybody from doing their legal duty.

25 Mr. Schreiber, I am going to deny the motion

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2 for a new trial on the grounds of newly discovered  
3 evidence. I have considered the papers last night.  
4 I considered them this morning. I read them again over  
5 the lunch hour. I heard very excellent arguments on  
6 both sides. I find that what was said to Mrs. Brooke  
7 was certainly not inappropriate in the circumstances.

8 In my judgment, it was thoroughly justified by  
9 what had happened. It does not rise to any level, in  
10 my opinion, that requires a prosecutor to tell anybody  
11 about trying to get a recalcitrant witness to the Court  
12 House who is going to England so she doesn't have to  
13 respond to the subpoena.

3 14 I feel that the exercise of due diligence if  
15 Jack Tigue had pressed around a little more he could have  
16 ascertained these facts and was one or two questions away  
17 from asking it and he went on to something else. I find  
18 that, in any event, it would be merely impeaching and I  
19 certainly find that it is far from anything that, in my  
20 judgment, would probably produce a different verdict had  
21 it been revealed on the trial. There is no claim here  
22 that she testified in any way other than truthfully on  
23 the merits. She does not make that claim. You do  
24 not make that claim and there is nothing here in this  
25 record where she says "I have testified in a manner that

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## Transcript of Hearing.

was slanted or untruthful", or in any way improper as a result of the prosecutor having said, "Lady, get here because we have got process out for you."

There is nothing here that anything she said on this trial was not true. I, therefore, deny the motion for a new trial on the grounds of newly discovered evidence.

Mr. Leonard is in Sardinia so his plans and the thoughts that I have about this coincide fairly well. He is coming back you say on July 6.

MR. SCHREIBER: That is correct.

THE COURT: We set surrender date for 10 o'clock in the morning on July 7. That would give you ten days to go to the Court of Appeals, see what they have to say, seek a stay, have it adjudicated and he shall also pay on July 7, absent some other Court determining to the contrary.

So ordered.

MR. SCHREIBER: If your Honor please, that is awfully short.

THE COURT: I don't believe it's awfully short. I think it's entirely appropriate. If the Court of Appeals judge feels that a further stay should be granted here he will, but this case was tried a year and a half

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Transcript of Hearing.

ago. I believe it an entirely appropriate amount of  
time and if an appellate judge feels a further stay should  
be granted then he has the power to do so and if you can  
convince him to do that I am sure he will.

MR. SCHREIBER: Thank you very much, your Honor.

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, 26/76

Affidavit of Leonard's Trial Counsel John J. Tigue, Jr.  
Dated 5/26/76.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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|                          |   |                  |
|--------------------------|---|------------------|
| UNITED STATES OF AMERICA | : | 74 Cr. 599       |
|                          | : |                  |
| -v-                      | : | <u>AFFIDAVIT</u> |
| JACKSON D. LEONARD,      | : |                  |
| Defendant                | : |                  |

-----X

STATE OF NEW YORK     )  
                              : ss.:  
COUNTY OF NEW YORK    )

JOHN J. TIGUE, JR., being duly sworn, deposes and says:

1. I am a member of the firm of Kostelanetz, Ritholz & Mulderig, and was trial counsel for the defendant Jackson D. Leonard. I submit this affidavit at the request of James Schreiber, Esq., who is presently counsel of record in this case.

2. Mr. Schreiber has shown me a copy of the affidavit of Eva Brooke which is attached to his accompanying affidavit as Exhibit B. As the Court may recall, Mrs. Brooke was an important government witness whose trial testimony was extremely damaging to Mr. Leonard.

3. When Mrs. Brooke testified as the "surprise" government witness, it was my belief that she was a willing government witness, and her demeanor and the government's questions to her on direct examination reinforced this belief. I had no knowledge that she had been threatened or coerced.

## Affidavit of John J. Tigue, Jr.

4. I did suspect that Mrs. Brooke may have been influenced by Kerr-McGee officials because Leonard had filed a multi-million dollar suit against Kerr-McGee in this Court, (Leonard v. Kerr-McGee Chemical Corp. 72 Civ. 936 (IBW)) which was pending at the time of trial. I had been informed that this civil suit involved an allegation that Kerr-McGee had improperly utilized chemical designs and processes belonging to Leonard, a fact which Leonard had discovered as a result of an informal tour of the Kerr-McGee plant in Hamilton Mississippi, a tour given to him by a then Kerr-McGee employee, Jack Brooke, Eva Brooke's husband. Pretrial discovery in this civil case was nearly complete and the case was being prepared for trial. I was suspicious that she may have been influenced or given money by Kerr-McGee to testify as she did. I therefore caused subpoenas to be served on Kerr-McGee's lawyers and on various banks in Oklahoma, where Mrs. Brooke formerly lived and where she and Kerr-McGee may have maintained bank accounts.

5. As the Court may recall, at the trial Mrs. Brooke, in response to questions relating to an affidavit she had signed in connection with the Kerr-McGee litigation, produced drafts of the affidavit, in her own handwriting, which made no mention at all of Leonard's allegedly having said he personally had a Swiss bank account. It was this discrepancy that I focused on during my cross-examination, trying to show that her affidavit had been written by Kerr-McGee lawyers who were trying to embarrass and injure Leonard.

## Affidavit of John J. Tigue, Jr.

6. It now turns out that these subpoenas and, in fact, my cross-examination were misfocused. According to her affidavit, she claims that she has been threatened not by Kerr-McGee officials but by the government.

7. Her testimony, in my opinion, was critical to the government's case. While a reading of the dry transcript may not elicit the flavor of the trial at the moment she testified, I recall, and it is my considered judgment, that her testimony was vital to the government's case and was devastating to Leonard. Without it, there was a substantial possibility that the result in this case might have been different.

8. Prior to her testimony, I was of the view that Leonard had a significant chance to succeed on the merits. Her testimony radically changed the dynamics of the trial. Indeed, after her direct testimony, I felt that unless her credibility was substantially damaged through cross-examination, Leonard's chances were considerably diminished.

9. If I had known that she believed she had been threatened by the government with arrest and extradition or if I had known of the substance of Mrs. Brooke's current affidavit, I would have materially altered my cross-examination.

10. I have tried approximately 20 criminal cases in the last six years, as an Assistant U.S. Attorney in the Southern District of New York, as assigned defense counsel and as retained defense counsel. While I recognize that any judgment on matters of this sort is subjective, it is nonetheless my considered judgment that had I known of the alleged threats to Mrs. Brooke,

## Affidavit of John J. Tigue, Jr.

and had I been permitted to cross-examine her broadly on this point, there is a significant possibility that the jury would have reached a different result. I do not say this lightly. Leonard's "wilfulness" was a critical issue and her testimony on this point cannot be underestimated. Such cross-examination would have lent substantial support to an argument I made at trial, namely, that the IRS was harassing Mr. Leonard and may have been "out to get him".

11. The government's presentation at trial was very confusing. There were over one hundred trial exhibits, most of which were checks and invoices, resulting in substantial confusion as to which amounts from Union Carbide Corporation ("UCC") Leonard had actually reported, which amounts Leonard had not been required to report (the UCC engineering fees passed on by Leonard to Treadwell) and which amounts Leonard had allegedly improperly omitted. Indeed, in the relevant period, Leonard had received checks totalling approximately \$1,661,341.61 from UCC: \$911,341.61 was properly passed on to Treadwell and resulted in a complete "wash"; and \$750,000 was reported by Leonard on his 1967 and 1968 personal return and in his fiscal 1968/1969 Subchapter S Corporation informational return.

12. Yet the only amounts the jury could properly have found that Leonard had omitted were the monies paid over to him by Treadwell. For 1967, these fees constituted less than 10% of Leonard's reported adjusted gross income for that year and, assuming his Subchapter S Corporation was properly on a fiscal year basis, less than 5% of his reported adjusted gross income for

## Affidavit of John J. Tigue, Jr.

1968. Whatever confusion these figures and the voluminous exhibits may have created with the jury was compounded by the fact that the government failed to produce charts explaining and summarizing what all these checks (some going to Leonard, some then on Treadwell and still others back to Leonard) ultimately meant and more importantly precisely which checks the government claimed to have been omitted.

13. On the other hand, what was easy for the jury to have understood was that the government accused Leonard of lying about not having a Swiss bank account. It is my opinion that this issue, more than any other, colored the jury's view of the case and made Eva Brooke's testimony so significant and damaging\*.

## Affidavit of John J. Tigue, Jr.

14. For these reasons, it is respectfully submitted, in view of the alleged threats to Eva Brooke (which were not disclosed to me) and in the interest of justice, that Leonard should be granted a new trial.

John J. Tigue, Jr.

Sworn to before me this  
26<sup>th</sup> day of May, 1976

Mary Ann Bosko

MARY ANN BOSKO  
Notary Public, State of New York  
No. 31-5293105  
Qualified in New York County  
Commission Expires March 30, 1978

\*The government's evidence regarding the "official" Chase Manhattan Bank checks also spotlighted this issue. While Eva Brooke's testimony concerning what Leonard had allegedly said in 1971 (about having a Swiss bank account) was not relevant as to the truth or falsity of the Laski-dictated Swiss bank affidavit signed 2 years before in August 1969, the jury nonetheless probably concluded (based on her testimony) that the \$383,000 paid by Chase Manhattan in 1969 had come from Leonard's own account. Such a conclusion would have been improper. There was no evidence whatsoever that Leonard had such an account in 1969, prior to signing the affidavit. Therefore, the issue of wilfulness substantially boiled down to whether the jury believed Eva Brooke's testimony.

Affidavit of Leonard's Trial Counsel, John J. Tighe, Jr.,  
Dated 6/21/76.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-v- :

AFFIDAVIT

JACKSON D. LEONARD, :

Defendant. :

-----x

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JOHN J. TIGHE, JR., being duly sworn, deposes and  
says:

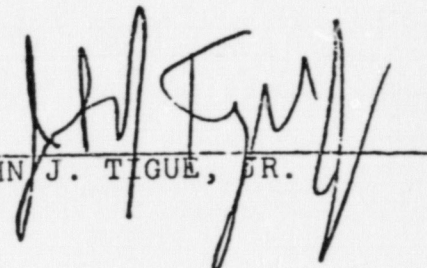
1. I represented a Jackson Leonard at his trial at  
which Mrs. Eva Brooke testified on January 16, 1975.

2. At the conclusion of Mrs. Brooke's direct testi-  
mony and prior to her cross examination I was given an  
opportunity to interview Mrs. Brooke. I did so in the court-  
house on the afternoon of January 16, 1975. During the course  
of that interview I asked Mrs. Brooke how it was she came to  
testify at Mr. Leonard's trial. She responded that she had  
been subpoenaed and that the Government paid her airfare from  
London.

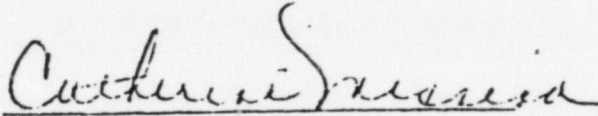
3. During the course of Mrs. Brooke's testimony and  
during my interview with her she appeared to be close to tears  
and was obviously emotionally upset. I thought Mrs. Brooke  
was upset because of the recent death of her husband which

## Affidavit of John J. Tigue, Jr.

was the reason I neither questioned her on this score nor pressed her unduly during the interview and cross examination.

  
JOHN J. TIGUE, JR.

Sworn to before me this  
21st day of June, 1976.



CATHERINE M. MENA  
Notary Public, State of New York  
No. 24-7011692  
County of Kings County  
Comm. Expires March 30, 1978

## Excerpts of Summation by Leonards' Trial Counsel.

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2 of the trial. I have to anticipate what Mr. MacDonald is  
3 going to say during the course of his summation.

4 I don't imagine that anything I say will etch  
5 itself on your minds, but please remember with respect to  
6 1968 that starting in February that income was corporate  
7 income, every penny of it from that date on.

8 Now, ladies and gentlemen, I would like to turn  
9 for a minute to Mrs. Brooke. Mrs. Brooke is the English  
10 lady who came here the other day from England. Even though  
11 Mr. Shawver couldn't make it from South Charleston, Mrs.  
12 Brooke came from England to testify here.

13 I submit to you, ladies and gentlemen, that that  
14 woman is a widow who was taken advantage of by lawyers,  
15 the lawyers for Kerr McGee. She is a woman who has had  
16 great tragedy in her life and not that long ago, some  
17 eight or nine months ago. She came to live in this country  
18 in 1971 and her husband died less than three years thereafter.  
19 It was not a pleasant thing to have to ask that woman  
20 questions, especially questions touching on very sensitive  
21 matters, matters which are heartbreaking to her, some of  
22 her most sensitive feelings.

23 And I hope you are not going to hold it against  
24 me. But more importantly I hope you won't hold the ques-  
25 tioning that I did of Mrs. Brooke against Mr. Leonard,

## Excerpt of Summation.

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1 because I'm here simply doing my job, and part of my job,  
2 as I see it, ladies and gentlemen, is to attempt to show  
3 to you that there is perhaps a motive or an axe to grind  
4 for a witness when a witness comes here and tells you some  
5 testimony on the witness stand.  
6

7 Now, just very briefly, I want to talk about  
8 Mrs. Brooke because, remember, this conversation that she  
9 claims she had was supposed to be in 1971. The charges in  
10 the indictment relate to 1967 and 1968.

11 Mr. Leonard and Mr. Brooke were friends for  
12 some 25 years. In 1971 they entered into hot and heavy  
13 negotiations as to whether or not they would become business  
14 partners. Those negotiations collapsed and they didn't  
15 become business partners, and it turns out that a few months  
16 later, in 1972, that at least in the mind of Mrs. Brooke,  
17 Mr. Brooke takes Mr. Leonard to a plant. Mr. Leonard  
18 claims that Kerr McGee has defrauded him on a patent matter  
19 and that he is now going to have to bring a lawsuit against  
20 Kerr McGee.

21 Remember, Mr. Brooke is an officer, an officer  
22 of Kerr McGee Corporation, and Mr. Leonard says, "I'm sorry  
23 I don't know what to do about it, but I have to start the  
24 lawsuit. My lawyers require it, and I am going to have to  
25 go ahead and do it.

## Excerpts of Summation.

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2 "And not only that, what is worse, my old friend,  
3 they tell me that you are going to be an inevitable witness  
4 in this situation."

5 Can you imagine how humiliated this fellow Mr.  
6 Brooke must have been? Here he is, an officer of Kerr  
7 McGee Corporation, a friend of Leonard's for years, now he  
8 is in the middle of a very embarrassing situation. He is  
9 a corporate officer who, in a sense at least, in the mind  
10 of Mrs. Brooke, is the cause of a lawsuit against Kerr  
11 McGee.

12 And the situation finally developes that the  
13 lawsuit is very substantial, and lo and behold he does  
14 become a witness. And when does he become a witness?  
15 When does he become a witness? He becomes a witness on  
16 his death bed, when he is gravely, seriously ill, 48  
17 hours before he died.

18 And I think at that point, when I asked Mrs.  
19 Brooke about this, I asked her wasn't she completely opposed  
20 to the taking of the deposition, the examination before  
21 trial, and I think she let loose just a little bit there to  
22 show you how outraged and how furious she was about that,  
23 and probably rightly so. I mean, these lawyers go down to  
24 question the man literally on his death bed.

25 But, remember, I asked her whether or not she

## Excerpts of Summation.

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2 knew it was Kerr McGee's idea and whether or not it was  
3 done over Mr. Leonard's lawyer's objections. She didn't  
4 know that. But I think it is pretty clear, ladies and  
5 gentlemen, that she was pretty bitter about that, pretty  
6 bitter about that.

7 Because Mr. Leonard's lawyer was present and he  
8 attended the deposition, and I guess you can find from the  
9 evidence that he did exactly what the lawyers do all the  
10 time. They cross examine witnesses when it comes their  
11 turn. And the obligation is the same whether the man is  
12 well or ill.

13 Now, at this point, at this point the lawyers  
14 for Kerr McGee come into the picture. Within a few days  
15 after Mr. Brooke is buried, the lawyers for Kerr McGee,  
16 who have got a hot and heavy lawsuit on their hands, take  
17 Mrs. Brooke aside and say, "Nice lady, please sit down and  
18 tell us what you know about Jack Leonard."

19 And she does that, she does that, and she does  
20 her best under the circumstances, a distraught woman whose  
21 husband just died, in a country which is not her own, and  
22 these lawyers come in and they ask her to do a little  
23 work for them.

24 And we haven't read all this to you, ladies  
25 and gentlemen, because we can't read all of every document

## Ex cpts of Summation.

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2 that comes into evidence, but this is Defendant's Exhibit  
3 AF, these are the handwritten notes of Mrs. Brooke.

4 Thank God for these notes, ladies and gentlemen,  
5 because the importance of these notes are that they were  
6 written by Mrs. Brooke in the privacy of her own home, with-  
7 out any lawyers trying to tell her what to put in there  
8 and what not to put in there, and you will see, ladies and  
9 gentlemen, if you look through these notes, there is not a  
10 whisper, not a word about Jackson Leonard having any Swiss  
11 bank account in 1971 or at any other time, not a word.

12 But what happens next? It is given to the lawyers  
13 and the lawyers say, "No, not good enough, Mrs. Brooke.  
14 You've got to come up with something better than that."  
15 And they do come up with something better than that. They  
16 come up with Defendant's Exhibit AG, which is the draft  
17 affidavit. We will get to the final in a minute.

18 And now for the first time you see all the nice  
19 things that I asked Mrs. Brooke about. For instance, "The  
20 Leonards have always been kind and friendly towards me."  
21 That gets dropped out, as she says, at the insistence of  
22 the lawyers. All the nice things come out and in come what  
23 I would call the zingers.

24 Fortunately, the lawyers were a little careless.  
25 They put down that "My first meeting with Mr. Leonard took

## Excerpts of Summation.

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2 place on November 15, 1970 in his apartment."

3 So they put this down, and this is the time,  
4 for the first time now, there is any business about a Swiss  
5 bank account that Mr. Leonard supposedly has.

6 And they sit down and they say, "You know, why  
7 don't you fill in the missing blanks and sign this." And  
8 she goes to her task force and she says, "Fellows, November  
9 15, I was not in the United States. I wasn't there at all."

10 Boy. I mean, that was luck for Mr. Leonard,  
11 because now, you see, they come in with the final affidavit,  
12 Defendant's Exhibit AE in evidence, and now you will notice  
13 that the November 15, 1970 date is gone, bye, bye, out of  
14 the affidavit.

15 Now they get a little tricky, because they have  
16 been zinged before. They found out that if they put a  
17 specific date down, Mr. Leonard might be able to establish  
18 he wasn't around. So they say, well, "Between April and  
19 September of 1971."

20 You know, good fortune struck again. I see on  
21 the front of the affidavit there is February 22, 1971,  
22 another meeting she claimed she had with Mr. Leonard. I  
23 shouldn't say she claims; the lawyers for Kerr McGee  
24 claims, because they are going to use this affidavit. The  
25 intent of this is to use in the litigation. At the top it

## Excerpts of Summation.

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says "Leonard vs. Kerr McGee."

The expense vouchers strike again. Defendant's Exhibit AI are expense vouchers for that period of time, and you will recall that I asked Mrs. Brooke if she knew whether or not Mr. Leonard was not in the country, and she said, "Certainly not. He was here in New York."

Also you will notice, in the final affidavit there are a couple of nice little zingers in there about Mr. Leonard has been divorced, Mr. Leonard has alimony, his wife has got some problems because she is speeding in a boat or something. Those aren't in these handwritten notes, ladies and gentlemen. Those are the product of the minds of a couple of very aggressive lawyers who are looking to defend Kerr McGee from a very heavy lawsuit.

One thing. I've got a little note here. This is a little testimonial to my friend the prosecutor here. He made it clear to you on redirect examination that he had never seen these handwritten notes, nor the draft, before he put her on the witness stand. He found out about those after I asked her to produce the notes that were the drafts of the affidavit. And he just made it pretty clear on redirect examination that he wasn't part of any of this operation.

Now, just a couple of last words on Mrs. Brooke. You will recall when she said that even though she had come

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2 here twice, or at least once in November and December,  
3 the next time she came here she never gave Mr. Leonard a  
4 call, which you would figure an old friend might do, saying  
5 "I am coming to testify on behalf of the Government and I  
6 would just like you to know it."

7 The other thing that I think is interesting and  
8 really kind of shows how bitter Mrs. Brooke is, and I am  
9 not criticizing Mrs. Brooke at all, you will find it is  
10 the lawyers who put her up to this . But when Mr. Brooke  
11 was dying, on his death bed, Mr. Leonard called her and  
12 he says, "I would like to come and visit my old friend  
13 Jack Brooke before he dies." And she says, "No dice. You  
14 can't come."

15 I think, ladies and gentlemen, that is the best  
16 showing of the interest that Mrs. Brooke had in coming to  
17 testify here.

18 Also, a few remarks about even her version of the  
19 night. They came to Mr. Leonard's apartment, they had a  
20 couple of drinks before dinner, they went out to dinner.

21 You may find evidence that they had one or more  
22 drinks at dinner. After that they went to PJ Clark's. I  
23 don't know how many of you have been there. But you may  
24 find from the evidence that alcoholic beverages are sold  
25 there. After they were finished at PJ Clark's they came

## Excerpts of Summation.

1 jge

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2 back to Mr. Leonard's apartment house for a night cap.

3 Ladies and gentlemen, is that the kind of evi-  
4 dence that you are going to use to convict Jack Leonard  
5 beyond a reasonable doubt? Is that the kind of evidence  
6 that relates to the years 1967 and 1968, which are charged  
7 in the indictment? I submit, ladies and gentlemen, that  
8 that casual chit chat, whatever it was, back in 1971 is not  
9 proof of the charges in this indictment. And you will  
10 remember that his Honor gave you some instructions with  
11 respect to whether or not this was proof of the charges  
12 in the indictment, and you will hear his complete charge  
13 in a minute.

14 But the people who should have been here to be  
15 cross examined, ladies and gentlemen, were not Mrs. Brooke,  
16 but the attorneys who put her up to a lot of the statements  
17 that appear in there, especially the one with respect to  
18 the Swiss bank account.

19 And I'm not calling Mrs. Brooke a liar. That  
20 is a pretty hard word. It is a situation wherein she is a  
21 person who has been taken advantage of at her hour of  
22 deepest distress, and I submit, ladies and gentlemen, that  
23 that's not the kind of evidence upon which you can rely to  
24 convict a dog in the street, much less a human being who is  
25 charged with two felonies.

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Summons and Complaint  
72 CIV 936.

SUMMONS IN A CIVIL ACTION

CIV. 14 (2-61)  
(Formerly D.C. Form No. 43a Rev. (6-49))

United States District Court

FOR THE

~~SOUTHERN DISTRICT OF NEW YORK~~

CIVIL ACTION FILE NO. 72 Civ 936

JACKSON D. LEONARD d/b/a J. D.  
LEONARD & ASSOCIATES and THE  
LEONARD PROCESS CO., INC.,

Plaintiffs,

Plaintiff

v.

KERR-MCGEE CHEMICAL CORP.,

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

SHEA GOULD CLIMENKO & KRAMER

plaintiff's attorney , whose address

330 Madison Avenue  
New York, New York 10017

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Summons and Complaint,  
72 CIV 936.

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

*John L. ...*  
Clerk of Court.  
*S/B. Edwards*  
Deputy Clerk.

*MAR 6 1972*  
Date: New York, New York  
March 3, 1972

[Seal of Court]

NOTE:—This summons is issued pursuant to rule 4 of the Federal Rules of Civil Procedure.

Complaint, 72 CIV 936.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

|                                |   |                  |
|--------------------------------|---|------------------|
| JACKSON D. LEONARD d/b/a J.D.  | : |                  |
| LEONARD & ASSOCIATES and       | : |                  |
| THE LEONARD PROCESS CO., INC., | : |                  |
| Plaintiffs,                    | : | <u>COMPLAINT</u> |
| -against-                      | : |                  |
| KERR-McGEE CHEMICAL CORP.,     | : | 72 Civ. 936      |
| Defendant.                     | : |                  |

-----x

Plaintiffs, by their attorneys, Shea Gould Climenko  
& Kramer, for their complaint herein allege:

FIRST COUNT

1. Plaintiff JACKSON D. LEONARD ("Leonard") is a chemical and consulting engineer who at one time did business as a sole proprietorship organized under the laws of the State of New York under the name of J.D. LEONARD & ASSOCIATES.

2. Plaintiff THE LEONARD PROCESS CO., INC. ("Process") is a New York corporation with its principal office at 37 West 37th Street, New York, New York. Plaintiff Process duly succeeded to all of the assets of J.D. Leonard & Associates.

3. Upon information and belief, defendant KERR-McGEE CHEMICAL CORP. is the successor-by-merger to AMERICAN POTASH & CHEMICAL CORPORATION (hereinafter referred to as "Potash") and has duly agreed to assume all of the obligations and liabilities of Potash.

## Complaint, 72 CIV 936.

4. Upon information and belief defendant is a corporation organized and existing under the laws of the State of Delaware, with a principal office in Oklahoma City, Oklahoma.

5. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1332 on the grounds that:

(a) Plaintiff Leonard is a citizen of the State of New Jersey, plaintiff Process is a citizen of the State of New York and the defendant corporation is incorporated under the laws of a foreign state and has its principal place of business in a state other than the State of New York; and

(b) The amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand (\$10,000) Dollars.

6. Leonard was at all relevant times in the business of custom-designing chemical plants and developing special processes to be used in such plants.

7. Prior to 1961 plaintiff developed a new process for the manufacture of titanium dioxide pigment known as the "Chlorine Process" (also referred to at times as the "Chloride Process"). A key element of Leonard's Chlorine Process is the oxidation of the titanium tetrachloride and the design of the equipment required to accomplish such oxidation.

## Complaint, 72 CIV 936.

8. Potash, a chemical manufacturer with no prior experience in the manufacture of titanium dioxide pigment, expressed interest in Leonard's Chlorine Process and on May 6, 1961 Leonard and Potash entered into a written agreement (the "Agreement") under which plaintiff agreed to design a pilot plant and a full-scale commercial plant for Potash which were to use Leonard's Chlorine Process in the production of titanium dioxide pigment.

9. The Agreement provided for certain payments to be made by Potash to Leonard in connection with the design and construction of the pilot plant and full-scale commercial plant and provided further that Potash would have the right to construct additional titanium dioxide plants using Leonard's Chlorine Process upon:

(a) payment to Leonard of an amount equal to \$15 per annual ton of design capacity of each such additional plant constructed in the United States or any of its territories (or Canada or Mexico if constructed by Potash alone); or

(b) payment to Leonard of an amount equal to \$25 per annual ton of design capacity of each such additional plant constructed elsewhere in the world (or in Canada or Mexico if constructed by Potash in cooperation with another party).

10. Leonard performed all of the conditions of the Agreement on his part to be performed including disclosure of his Chlorine Process to Potash.

Complaint, 72 CIV 936.

11. A pilot plant employing Leonard's Chlorine Process was constructed in Grimsby, Wales, United Kingdom, by Potash acting in concert with an English corporation named Laporte Titanium Limited.

12. In 1964 Potash represented to Leonard that his design of the pilot plant was defective and that his Chlorine Process was ineffective and worthless.

13. Potash offered to pay Leonard a portion of the agreed-upon design fee if he would consent to terminate the Agreement and release of all his rights with respect to his Chlorine Process.

14. Leonard requested that Potash permit him an opportunity to inspect the pilot plant to ascertain personally whether there were any deficiencies in processes and/or equipment design which would necessitate modifications in order to obtain product output of the quality specified in the Agreement.

15. Potash, however, refused to grant plaintiff permission to inspect the pilot plant and, by reason of such refusal, Leonard was never able to enter the plant or conduct any inspection of the equipment therein, nor was he given an opportunity under the terms of the Agreement to correct any of the alleged deficiencies.

16. Upon information and belief, when the above-mentioned representations were made to Leonard, Potash knew them to be

false and made them with the intent to deceive and defraud Leonard in order to induce him to execute an agreement releasing Potash from its obligations to Leonard.

17. At the time Potash made its representations, Leonard did not know that they were false or misleading, nor did Leonard have the means to ascertain their truth or falsity.

18. In addition, in order to induce Leonard to terminate the Agreement and to release his rights thereunder, Potash threatened that if Leonard refused to accede to Potash's demands, Potash would issue or cause to be issued and circulated on a worldwide basis damaging and unfavorable press releases and other publicity to the effect that Leonard's design of the pilot plant was defective, that his Chlorine Process was ineffective and worthless, and that Leonard was incompetent and unreliable.

19. At the time Potash made these threats, Leonard was actively seeking to generate additional business in the field of chemical process design and consulting.

20. On or about January 29, 1965, in reliance on Potash's aforesaid representations, Leonard executed a release terminating the Agreement.

21. Upon information and belief, shortly after Leonard had been induced to execute the release dated January 29, 1965, Potash commenced construction of a full-scale commercial plant for the production of titanium dioxide pigment in Hamilton, Mississippi (the "Mississippi plant").

## Complaint, 72 CIV 936.

22. Leonard was not given access to the Mississippi plant when it was first built and operated. It was not until 1971 that Leonard discovered that the Mississippi plant in fact employed the very same Chlorine Process, including the oxidizer design and process, which had been developed by Leonard and which Potash had represented to him to be ineffective and worthless.

23. Thus, it was not until 1971 that Leonard discovered, or could with reasonable diligence have discovered, that the representations which Potash had made in 1965 to induce plaintiff to terminate the Agreement and to release his rights thereunder were false and fraudulent.

24. By reason of Potash's fraudulent conduct, Leonard and his assignee have been deprived, inter alia, of the right to receive royalties in an amount equal to \$15 per annual ton of design capacity of the Mississippi plant.

SECOND COUNT

25. Plaintiffs repeat and reallege Paragraphs "1" to "23" of this complaint.

26. Upon information and belief, Potash or defendant Kerr-McGee Chemical Corp. have licensed, or are planning to license, Leonard's Chlorine Process to other manufacturers of titanium dioxide, including but not limited to Ishihara Sangyo Kaisha Ltd. of Japan.

## Complaint, 72 CIV 936.

27. By reason of Potash's fraudulent conduct, Leonard and his assignee have been deprived, inter alia, of the right to receive royalties pursuant to any licenses of the Chlorine Process granted by Potash or defendant Kerr-McGee Chemical Corp. to others.

WHEREFORE, plaintiffs demand judgment against defendant:

1. For an accounting of all royalties due to plaintiffs by reason of Potash's or defendant Kerr-McGee Chemical Corp.'s construction of one or more plants employing plaintiffs' Chlorine Process.
2. For an accounting of all royalties due to plaintiffs by reason of Potash's or defendant Kerr-McGee Chemical Corp.'s licensing of plaintiffs' Chlorine Process to others.
3. For punitive damages in the sum of \$5,000,000 by reason of Potash's malicious, wanton and reckless conduct.
4. For such other relief as may be appropriate.
5. For the costs and disbursements of this action.

SHEA GOULD CLIMENKO & KRAMER  
Attorneys for Plaintiffs

By:         

*Anna C. Heller*

A Member of the Firm  
330 Madison Avenue  
New York, New York 10017  
(212) 661-3200

jge Trial Testimony, Eva Eileen Brooke<sup>509</sup>

## AFTERNOON SESSION

3:00 p.m.

EVA EILEEN BROOKE, called as a  
witness by the Government, being first duly sworn  
by the Clerk of the Court, testified as follows:

## DIRECT EXAMINATION

BY MR. MAC DONALD:

Q Mrs. Brooke, would you tell the jury where you  
currently reside or intend to reside?

A I shall reside in England in the future.

Q And are you the widow of Mr. Jack Brooke?

A I am.

Q And would you tell us when Mr. Brooke died and  
at that time where you were a resident?

A He died on April 12th, 1974 and we were residents  
of Oklahoma City.

Q And who was Mr. Brooke's employer in Oklahoma  
City?

A Kerr McGee Corporation.

Q How long had you maintained your residence in  
that location?

A Approximately four years.

Q I would like to draw your attention to the  
summer of 1971 and ask if during that period you and your

1 jge Brooke - direct 510

2 husband had occasion to spend an evening with Mr. Leonard,  
3 seated here, and his wife here in New York City?

4 A Yes, we did.

5 Q Would you tell the jury, please, what the four of  
6 you did that evening and, with respect to the business  
7 aspects of the conversation, what it was that Mr. Leonard  
8 and you and your husband talked about?

9 MR. TIGUE: Excuse me, Mrs. Brooke,  
10 Your Honor, this is the summer of '71. I would  
11 object to this on the grounds of relevance.

12 THE COURT: Overruled.

13 Q Okay. You can describe that evening as it  
14 unfolded.

15 A Yes.

16 We were invited to Mr. Leonard's apartment to  
17 have drinks with his wife and himself, which we did.

18 Mr. Leonard was extremely anxious that my husband  
19 join him in business, and he that evening said that -- well,  
20 made inducements that it would be good that my husband  
21 went into business with him.

22 For instance --

23 Q Tell us what he said in that respect.

24 A A free apartment at Sutton Place, and he mentioned  
25 the sum of \$100,000 a year, with my husband as president

mge

Brooke - direct

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1 of the company, 50,000 of which would be made in U. S.  
2 dollars and 50,000 to be deposited into a Swiss bank account.  
3

4 Q Do you recall what, if anything, was said with  
5 respect to the name on such Swiss bank account?

6 A None, no name at all.

7 Q What response did your husband give to Mr.  
8 Leonard's proposal?

9 A He said he would consider it.

10 Q Was there any writing prepared that evening  
11 in regard to that proposition?

12 A There was in fact a written note on this, but I  
13 did not see it myself.

14 Q And would you tell the jury what, if anything,  
15 you recall, in regard to the 50,000 Swiss bank portion of  
16 the proposal, was said concerning the opening of such an  
17 account and --

18 A Well, my husband and I -- I recall we were talking  
19 socially then, it was not business. We were interested in  
20 how a Swiss bank account was got, and so Mr. Leonard, as I  
21 remember, was evasive about how to get one, but he did in  
22 fact say, "I have one."

23 Q Do you recall if he said --

24 MR. TIGUE: "I have" --

25 THE COURT: "I have one."

jge

Brooke - direct

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MR. TIGUE: "I have one?"

THE WITNESS: I have a Swiss bank account.

MR. TIGUE: Thank you.

Q Do you recall anything further with respect to whether that account was in a name or a number?

A He said that -- in fact I think I asked the question, I'm always curious, and he said that Swiss bank accounts are numbered and not in a name.

Q Did I ask you what happened to that piece of paper that you referred to that had the terms of the offer written on it?

A Yes. My husband and I were staying at the Plaza, and he threw it in the waste basket.

MR. MAC DONALD: We have nothing further on direct examination.

mpe

Brooke

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(At the side bar.)

THE COURT: Mr. Tigue, I think I will take a recess for about five minutes.

MR. TIGUE: Before we go, I would have a couple of motions and a request for a recess myself.

(In open court.)

THE COURT: Ladies and gentlemen, we will stand in recess for five or ten minutes.

Mrs. Brooke, you can step down and sit in the back of the room or wherever is comfortable for you.

(In the robing room.)

THE COURT: Gentlemen, I have been presented with certain 3500 material, one of which is Mrs. MacDonald's notes, 3512A-1, and that is not 3500 material to turn over to you.

On the other hand, the 3512 you have been given is affidavit of a witness filed in a case before Judge Wyatt. I direct that the Government make available to Mr. Tigue the entire affidavit.

MR. TIGUE: He has given me a copy already.

MR. MAC DONALD: I have just complied.

THE COURT: Now, that disposes of the 3500 aspect of this, so now 3512-A-2 will just be called 3512-3, because the A signifies those as to which you have questions, or

1           mpe  
2           should I leave it with its number?

3                   MR. MAC DONALD: I think the recordd will reflect  
4           that Mr. Tigue has 3512-A-2. I guess I should have in the  
5           presence of the jury said we renew our offer of the  
6           '71 and '72 statements tax returns.

7                   THE COURT: The tax returns containing those  
8           statements? Let's assume that's been done.

9                   MR. TIGUE: First of all, your Honor, I would move  
10          to strike all of Mrs. Brooke's testimony, because it doesn't  
11          prove the affidavit which was given in 1969 was false.  
12          She specifically said he didn't say whether he opened it or  
13          whether he had it. I think that's the substance of it. So  
14          I don't believe that she connected the two up at all, so  
15          it has no probative value with respect to what the state  
16          of Mr. Leonard's banking connection is, if any, back in  
17          1969 and prior. So, I would therefore move to strike her  
18          entire testimony as being irrelevant.

19                   THE COURT: Well, I will deny that motion.

20                   MR. TIGUE: Then, your Honor, I would respect-  
21          fully move for a mistrial in view of this testimony. I  
22          guess I have stated at length my position with respect to  
23          all this and I would renew it on all those grounds again.

24                   THE COURT: The motion is denied. This in  
25          admissible as a statement in 1971 which this jury can take

mpe

Brooke

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1  
2 together with other evidence in the case and find that  
3 there was a Swiss bank account in existence at the time of  
4 the 1968 affidavit.

5 Taken together with the 1968 Chase Manhattan  
6 checks which were monies that had come from Banque Cantonale  
7 de Zurich.

8 All right.

9 MR. TIGUE: Your Honor, I have, in anticipation  
10 of this witness, served a subpoena on Mr. Paul Brown who  
11 has been calling the Court in the last few minutes, I  
12 believe.

13 Mr. Brown is the author of Government's Exhibit  
14 3512-A-2, which I was originally given. When I say the  
15 author, I mean he's the draftsman and I believe he's the  
16 draftsman for this statement, and I believe he also drafted  
17 the affidavit for this.

18 I have subpoenaed whatever notes of any conver-  
19 sations he or anyone in his law firm have had with Mrs.  
20 Brooke. So I would like, if I could, a recess for two  
21 reasons. One, to have a few minutes to speak with Mrs.  
22 Brooke if she will speak with me, and, two, to have an  
23 opportunity at least before Mrs. Brooke is dismissed as a  
24 witness, to read whatever notes Mr. Brown may have in his  
25 possession.

mpe

Brooke

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1 mpe  
2 THE COURT: That application will be granted.  
3 Where is Mr. Brown?

4 MR. MAC DONALD: In midtown somewhere. By the  
5 way, I don't think he is the author of this affidavit. I  
6 believe it was written by an Oklahoma attorney by the name  
7 of Walsh. So unless Mr. Tigue has a firmer basis than  
8 his client's speculation regarding authorship, we would not  
9 want to unduly delay the cross examination. The lawyer  
10 subpoenaed his attorney of record in the case before Judge  
11 Wyatt and he has provided me with the Xerox, 3512-A.

12 But I was told by Robert Walsh that he was the  
13 author of the affidavit.

14 MR. TIGUE: Your Honor, I would expect that the  
15 attorney of record would have a copy of whatever notes were  
16 taken, even though they aren't his own notes.

17 Secondly, Mr. Brown was the attorney who con-  
18 tinued a deposition of Mr. Brooke on the even of his death,  
19 and Mrs. Brooke was present at the deposition, and I would  
20 think that at least before she is dismissed that I would have  
21 an opportunity to take a look at his notes --

22 THE COURT: Mr. Brown?

23 MR. TIGUE: Mr. Brown.

24 THE COURT: All right. I will grant that. That  
25 would mean as a practical matter you would go over to the

mpe

Brooke

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1 morning with her cross examination?

2  
3 MR. TIGUE: I think I would have to, your Honor,  
4 and I would like an opportunity to chart with her right now.

5 THE COURT: Mr. MacDonald, I take it this lady,  
6 wherever she has come from, is prepared to stay overnight?

7 MR. MAC DONALD: Surely. I wonder if I could  
8 inquire of the Court whether or not your Honor -- I think  
9 Judge Griesa did this once with a witness -- apprise Mrs.  
10 Brooke of her rights with respect to submitting to an inter-  
11 view, off the record or on the record, with Mr. Tigue prior  
12 to --

13 THE COURT: It had occurred to me that I probably  
14 should do that.

15 MR. MAC DONALD: And the right to have counsel  
16 present of her choosing.

17 MR. TIGUE: I have no objection to advising her  
18 of her rights, your Honor, but my guess is that she has had  
19 more than one conversation with Mr. MacDonald, either in  
20 person or over the phone, and I simply would like to have  
21 the same conditions. I would not exclude a lawyer, but I  
22 would like to have an equal opportunity to that which  
23 Mr. MacDonald had.

24 It's a serious matter and it's your Honor's dis-  
25 cretion. With that caveat, I suppose I don't --

mpe

Brooke

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1  
2 MR. MAC DONALD: Your Honor, I suspect it turns  
3 out that having a record of defense counsel's interview with  
4 a witness limits opportunities for any misunderstandings.

5 Maybe Mrs. Brooke ought to understand what we have  
6 done in the past and what we are set up to do as to make --

7 MR. TIGUE: Did you do that of your interview  
8 with Mrs. Brooke?

9 THE COURT: I don't think I am going to do that.

10 Now, I have in mind to say to Mrs. Brooke, after  
11 telling her that she is to return in the morning at 9:30,  
12 and in the next few minutes I assume that Mr. Tigue, who  
13 is counsel for Mr. Leonard, would like to speak with her  
14 about the matters as to which she has given testimony;  
15 that there is no doubt on her part to talk to you; on the  
16 other hand, there is no legal bar to her talking to you,  
17 if it's her desire to do so.

18 MR. TIGUE: It's expressed a little negatively.  
19 Not illegal. I would prefer more layman's language, that  
20 its perfectly all right for her to speak with Mr. Tigue  
21 if she wants to, just as it was perfectly all right to  
22 speak with Mr. MacDonald.

23 THE COURT: All right. I will change it to  
24 this.

25 "Mr. Tigue wishes to speak to you about the

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Brooke

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1 matters which are involved here, and you may speak with  
2 him if you desire to do so, but there is no duty or require-  
3 ment that you do speak to him."  
4

5 MR. MAC DONALD: I wonder about further advice  
6 concerning her right to attach, if she wants to, the  
7 condition of the presence of an attorney of her choosing.  
8 Maybe Mr. Tigue doesn't limit his request to interview  
9 her alone.

10 MR. TIGUE: Well, certainly, I am going to have  
11 a witness present. I am not going to depend on a you-tell-  
12 me type of question.

13 MR. MAC DONALD: If you want to interview her  
14 in my presence --

15 MR. TIGUE: Mr. MacDonald, I am not prepared to  
16 come to any agreement with you about anything in this matter.  
17 I didn't know about this witness until an hour ago, and I  
18 can't agree to anything like that.

19 THE COURT: All right, gentlemen.

20 MR. TIGUE: Is your Honor going to rule on the  
21 1971, '72 tax returns?

22 THE COURT: Yes, I will admit them.

23 MR. TIGUE: I would object to both, but what  
24 does '72 have to do with this case? This conversation took  
25 place in 1971.

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THE COURT: Let me see the tax returns.

MR. TIGUE: They were just marked for identification.

THE COURT: Where is the statement that --

MR. MAC DONALD: On the bottom of each page.

THE COURT: I will keep out '72.

MR. TIGUE: On '71, I assume the question is limited to the question, "Do you have an account".

MR. MAC DONALD: It's the statement on the return that is important.

MR. TIGUE: There's no relevance to anything but the answer to the question, if there is any relevance to that.

MR. MAC DONALD: We have had a suggestion about the taxpayer's tax paying habits as going to his motive, and at least at this point I won't do more than read it to the jury.

THE COURT: I will admit it with the instructions that it is admitted only with reference to paragraph 31 on the first page.

MR. TIGUE: I really object to that. My word, that has absolutely nothing to do with this case, except as your Honor has ruled, he said no on his return --

THE COURT: Well, that's all in evidence. The

mpe

Brooke

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1 balance of the return, obviously it's in evidence as a  
2 1971 tax return of Jackson D. Leonard.  
3

4 MR. TIGUE: But if the jury wants it -- I don't  
5 even know what's on the '71 return. I would ask that that  
6 not be shown to them, that the box be read but the numbers  
7 blanked out.

8 THE COURT: Mr. MacDonald, why don't you put  
9 in page 1.

10 MR. MAC DONALD: Why don't I simply read the  
11 question and answer to the jury, Judge, and maybe we can  
12 arrive at some accommodation about blanking out or not, and  
13 maybe the corss examination will make it admissible.

14 THE COURT: Well, I was going to say as far as  
15 I am concerned, page 1 is in, but it's blanked out from  
16 lines number 12 through everything pertaining to line number  
17 30.

18 In other words, you have got the top and bottom,  
19 and the rest of page 1, the balance of it is out.

20 MR. MAC DONALD: I would just ask the Court to  
21 explain to Mrs. Brooke in Mr. Tigue's absence --

22 MR. TIGUE: I might be present.

23 THE COURT: Why don't I have her come in here?  
24 I think it should be on the record.

25 MR. MAC DONALD: Surely. She can answer whatever

1 mpe

2 she is going to answer.

3 THE COURT: Well, it will be a matter of record,  
4 Mr. Tigue, unless you want to be here, and I will intro-  
5 duce you.

6 (The witness entered the robing room.)

7 THE COURT: Mr. MacDonald you have met. This is  
8 Mr. Tigue, who is counsel for Mr. Leonard in this case.

9 He would like to talk to you on an interview-  
10 type basis, and in that connection I just want to, since  
11 you are -- I gather you are a British subject, are you?

12 THE WITNESS: Yes, I am.

13 THE COURT: Just so that I give you some thoughts  
14 that are appropriate for this request, I want to say that  
15 you may speak to him if it is your desire to do so.

16 THE WITNESS: I see.

17 THE COURT: You may, if you wish have someone  
18 else with you of your own choosing, a friend, a lawyer or  
19 otherwise, at any such time, if you wanted to have some-  
20 body else there at that time, or you may talk to him alone  
21 if you would like.

22 There is no duty incumbent on you, however, or  
23 any requirement that you do talk to him, and if you don't  
24 want to talk to him, then you needn't.

25 Do you follow what I say?

mpe

Brooke

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1 THE WITNESS: Yes, I do understand what you are  
2 saying.

3 THE COURT: So why don't you hop out now and  
4 think about what you would like to do and Mr. Tigue will  
5 presumably speak to you and you can guide yourself accord-  
6 ingly. He would like obviously, to discuss with you the  
7 matters that are involved in the testimony that you have  
8 given here.

9 THE WITNESS: Yes, obviously.

10 THE COURT: And the things related to it.

11 THE WITNESS: Yes, and I would say no, I don't  
12 mind discussing it with Mr. Tigue.

13 MR. TIGUE: Thank you very much.

14 THE COURT: All right. Why don't the two of you  
15 at your convenience, chat as to the circumstances under  
16 which you will do it and when and how?

17 MR. TIGUE: Well, I would think --

18 MR. MAC DONALD: May I read her one question,  
19 Judge, before we recess.

20 THE COURT: Very good, we will get the jury in.

(In open court, jury present.)

MR. MAC DONALD: Your Honor, we would at this time renew our offer of Government's Exhibit 83 for identification, the previously identified tax return.

THE COURT: The '71 tax return as limited is received in evidence. That is Government's Exhibit 83 for the year 1971.

(Government's Exhibit 83 for identification, was received in evidence.)

MR. MAC DONALD: Question No. 31 on the 1971 1040 for Jackson D. Leonard says:

"Did you at any time during the taxable year have any interest in or signature or other authority over a bank, securities or other financial account in a foreign country, except in a U. S. military banking facility operated by a U. S. Financial institution?"

And the no box is checked and the yes box is left blank in that return.

THE COURT: Does that complete our business for this afternoon?

MR. MAC DONALD: Yes, your Honor.

THE COURT: Ladies and gentlemen, we are going to sit tomorrow, as I said, only in the morning and not in the afternoon. Therefore, we will convene a little bit

1 jge

Brooke

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2 earlier than usual, and I will see you at 9:30, not  
3 10 o'clock but 9:30 tomorrow and we will sit until 1.

4 You are excused until 9:30 tomorrow. Do not  
5 discuss the case with each other or with anyone else.

6 (The jury left the courtroom.)

7 MR. TIGUE: Your Honor, I was just wondering  
8 about our scheduling. Would I plan to talk to Mrs.  
9 Brooke for a little while and then, I guess, the Govern-  
10 ment is resting and we will have motions and so forth.

11 Will we do that tomorrow morning at 9:30? I  
12 am worried about the jury.

13 THE COURT: Well, I would assume that there may  
14 be further questions of some kind. Perhaps there will not  
15 be. I would assume there might, and that might take some  
16 time. And after that I assume the Government will take  
17 whatever steps it takes and then I will act as counsel  
18 importune me. All right?

19 MR. TIGUE: Yes, your Honor.

20 (Adjourned to January 17, 1975 at 9:30 a.m.)  
21  
22  
23  
24  
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WITNESS INDEX

| <u>Name</u>                | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
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| Emil A. Nothofer           | 450           | 459          | 473             | 475            |
| Harris Egan                | 479           | 504          |                 |                |
| Eva Eileen Brooke          | 509           |              |                 |                |

EXHIBIT INDEX

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jge

UNITED STATES OF AMERICA

vs.

74 Cr 599

JACKSON D. LEONARD

January 17, 1975  
9:30 a.m.

(Trial resumed, jury present.)

THE COURT: Good morning.

Ladies and gentlemen, I wanted to repeat to you, in connection with the testimony of Mrs. Brooke yesterday and the admission into evidence of the 1971 tax return to the extent that I admitted it into evidence, that again, this testimony is not proof of any charge that is in the indictment. It is only proof going to the element of the wilfulness of the defendant if and when you reach that element in your deliberations. But it is not proof of anything else.

And you will recall I earnestly instructed you yesterday on that score with regard to certain other proof that was let in. This is a repetition to you of the same kind of instructions. You are to regard this proof in that light and in that light only.

All right. Go ahead, Mr. Tigie.

jge

Brooke - cross

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E V A       E I L E E N       B R O O K E,       resumed.

THE COURT: Mrs. Brooke, you are still under oath.

CROSS EXAMINATION

BY MR. TIGUE:

Q       Good morning, Mrs. Brooke?

A       Good morning.

Q       Mrs. Brooke, you came from England yesterday,  
arrived yesterday afternoon?

A       I did.

Q       Mr. Leonard and Mr. Brooke knew each other for  
some 25 years or more, did they not?

A       They did.

Q       And your husband was an officer, was he not, of  
a company called Kerr McGee?

A       He was.

Q       Can you tell us when you first met Mr. Leonard  
and/or Mrs. Leonard?

A       In 1970.

Q       What was the occasion on which you met them?  
Was it here in New York?

A       It was here in New York.

Q       And was this in connection with the discussions  
that Mr. Leonard and Mr. Brooke were having with respect to  
the possibility of becoming partners in business?

jge

Brooke - cross

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2

A They did mention that, yes.

3

Q And was that the main purpose of the meeting or

4

was it social?

5

A I have no idea why they made the appointment, but

6

I think it was social, because I was invited and Mr. Leonard's

7

wife was invited also.

8

Q You were living in Oklahoma at the time?

9

A I was not, no.

10

Q Where were you living at that time, Mrs. Brooke?

11

A I was still then a resident of England. I was

12

here on a visit.

13

Q And where did Mr. Brooke live at that time?

14

A He had been living in Oklahoma.

15

Q You were both invited to come to New York?

16

A We met in New York, yes.

17

Q And you had lunch or diner together?

18

A We had lunch at the 21 Club.

19

Q Can you give us a date on that, please?

20

A November. Was it November? November. We made

21

so many appointments that I cannot, I'm sorry, be specific

22

about exact dates. I cannot in my mind be specific about

23

them. I know I wrote them down in my affidavit.

24

Q Now, Mr. Brooke was a talented man in his

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business? He had received offers for employment other

jge

Brooke - cross

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Q Did you have diner?

A With Mr. Leonard?

Q Yes.

A Not at that time.

Q And after the February 22nd meeting, can you tell us when the next one was, to the best of your recollection?

A Yes. It was sometime in July, at his apartment.

Q And that's when you had the conversation which you related yesterday, is that right?

A If that's so.

Q At these various meetings, there was constantly discussed, was there not, the possibility of Mr. Brooke and Mr. Leonard becoming partners?

A This was always brought up, yes.

Q Now, there came a time when these discussions terminated; Mr. Leonard and Mr. Brooke decided they would not enter business together, is that right?

A That is so.

Q Did there come a time when Mr. Brooke informed you that he had shown a plant in Mississippi to Mr. Leonard?

A Yes.

Q And he and Mr. Leonard toured the plant together,

jge

Brooke - cross

531

did they?

A I have no idea. I wasn't there.

Q You were told that by Mr. Brooke, weren't you?

A Yes. He said that he had met Mr. Leonard down  
at Columbus.

mpe

Brooke - cross

532

Q And did he tell you that as a result of that meeting, that Leonard said he was going to sue the firm of Kerr McGee?

A Not at that particular point.

Q When did he tell you that?

A Sometime later.

Q Do you recall when?

A As far as I remember, the first inclination we had was when Mr. Leonard met us in Miami, when we were coming back from vacation, and --

Q Can you please give us a date?

A I think it was November.

Q Of what year?

A '71.

Q And at a point, Mr. Leonard said that he was going to sue Kerr McGee for about \$25 million?

A I have no idea. I wasn't in on the meeting. I was upstairs, and my husband and Mr. Leonard were downstairs discussing this. I later joined them, but they had already gone through it.

Q After that meeting, did you husband tell you that Mr. Leonard was going to sue Kerr McGee for some millions of dollars?

A He didn't mention any figure, but he said Mr.

1 Leonard was going to sue Kerr McGee.

2 Q And did he say that that was based in part on the  
3 inspection of the Mississippi plant which your husband had  
4 shown him?  
5

6 A No, he said it was based on things that had hap-  
7 pened long before my husband joined the Kerr McGee  
8 corporation.

9 Q Did he tell you in essence that Mr. Leonard  
10 claimed --

11 THE COURT: Could you speak up.

12 Q Yes. I am sorry. It's usually the other way  
13 around. The lawyers usuall ask the witness to speak up.

14 Did your husband tell you that Mr. Leonard  
15 claimed that in essence Kerr McGee had committed a fraud  
16 on him and that he was going to sue them because he dis-  
17 covered this alleged fraud when he observed the plant in  
18 Mississippi?

19 A He did say this, yes.

20 Q And did he also say that he regreted it, but  
21 it would inevitably come out that it was your husband who  
22 had shown Mr. Leonard the plant in Mississippi?

23 A This was not true, because my husband in fact  
24 said that in no way could Mr. Leonard have seen what he  
25 allegedly saw.

1 mpe

2 Q Yes. But your husband did tell you that Mr.  
3 Leonard claimed that he would have to be a witness  
4 because of the plant inspection, is that right?

5 A Yes, he did.

6 Q I mean I irrespective of whether that was true  
7 or not, that was told to you?

8 A Yes, it was.

9 Q And were you present at a discussion where  
10 Mr. Brooke stated that he would be embarrassed by this and  
11 that he did not look with favor upon having to be called as  
12 a witness in connection with that litigation?

13 A He never mentioned this. It didn't worry him  
14 in the least.

15 Q Now, were there telephone conversations between  
16 Mr. Brooke and Mr. Leonard in 1972?

17 A There were.

18 Q And you knew --

19 A Two.

20 Q --you knew that because you listened in to the  
21 telephone conversations at the extension?

22 A I was asked to by my husband.

23 Q You took notes during the course of that dis-  
24 cussion?

25 A In longhand.

1 mpe  
2 Q And that was with the idea of being a witness  
3 against Mr. Leonard at some future date?

4 A No, merely to -- my husband thought that Mr.  
5 Leonard might be taperecording his replies or that somebody  
6 else was listening in on an extension on the phone.

7 Q And did you ever tell anyone that if that was so  
8 that you would be a witness to what the conversation was  
9 between you and Mr. Leonard?

10 A This was never discussed in any way.

11 Q Mrs. Brooke, did you sign an affidavit on May  
12 22, 1974?

13 A I did.

14 Q And is this a copy of that affidavit of that date?  
15 I am showing you Defendant's Exhibit AE for  
16 identification.

17 A It is.

18 MR. TIGUE: I offer in evidence, your Honor,  
19 Defendant's Exhibit AE for identification. It's a copy of  
20 2412A-2, with which the Government supplied me.

21 MR. MAC DONALD: No objection.

22 THE COURT: Received.

23 (Defendant's Exhibit AE for identification,  
24 received in evidence.)

25 Q Mrs. Brooke, would you take a look at page 4,

xx

mpe

Brooke - cross

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1 I believe, at the affidavit, paragraph 9, and just read  
2 that sentence to yourself and tell us if that refreshes  
3 your recollection as to whether or not you had listened  
4 in on the telephone conversation with a view toward being  
5 a witness?

7 A No. This is not the idea at all. I was merely  
8 witnessing what my husband was saying and what Mr. Leonard  
9 was saying, but not with a view to being a witness for  
10 Kerr McGee Corporation. I was in no way involved in this,  
11 myself.

12 MR. TIGUE: May I read part of that paragraph  
13 9, your Honor?

14 THE COURT: Yes, you may.

15 (Mr. Tigie read to the jury from Defendant's  
16 Exhibit AE.)

17 MR. MAC DONALD: The request was to read para-  
18 graph 9.

19 THE COURT: He read half of it.

20 MR. MAC DONALD: I thought the bottom half, which  
21 speaks of the same subject, should be included.

22 MR. TIGUE: I will be delighted to.

23 THE COURT: Go ahead.

24 (Mr. Tigie read further to the jury from  
25 Defendant's Exhibit AE.)

mpe

Brooke - cross

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1  
2 Q You listened in on the March 2nd, 1972 conver-  
3 sation, is that correct?

4 A I did.

5 Q And also on the June 30, 1972 conversation?

6 A I did.

7 MR. TIGUE: I wonder if we might have the ori-  
8 ginal, your Honor. I marked the copy and I don't have the  
9 appendix.

10 THE COURT: Yes. Would you gentlemen step up  
11 just a moment, please.

12 (At the side bar.)

13 THE COURT: Mr. MacDonald, do you have this?

14 MR. MAC DONALD: Last night, the handwritten  
15 one was obtained by Mr. Tigue from Mrs. Brooke. This  
16 morning, Mrs. Brooke said Mr. Tigue had not asked for the  
17 first draft of the affidavit.

18 MR. TIGUE: Because I was unaware of its  
19 existence.

20 THE COURT: You have both of these exhibits at  
21 this point?

22 MR. MAC DONALD: Yes.

23 THE COURT: Shall I re-mark my copies?

24 MR. MAC DONALD: I assume Mr. Tigue is going to  
25 put them in evidence.

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Brooke - cross

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MR. TIGUE: Yes, I intend to.

THE COURT: I want the record to show that they  
were furnished.

MR. TIGUE: Yes. I received this immediately  
before Mrs. Brooke took the stand this morning, so I haven't  
read it completely.

THE COURT: All right. I just wanted to be sure.

MR. MAC DONALD: Judge, I have given you another  
copy of 3512. You wanted to give it to her.

THE COURT: All right.

(In open court.)

BY MR. TIGUE:

Q And the affidavit you have before you, Mrs. Brooke, which is Defendant's Exhibit AE, that is an affidavit in a lawsuit entitled "United States District Court, Southern District of New York, Jackson D. Leonard, DBA, doing business as J. D. Leonard and Associates and Leonard Process Company, Inc., plaintiffs, against Kerr McGee Chemical Corp., defendant."

A That is what it says here.

Q Yes. That is the affidavit that you signed, is that right?

A That's right.

Q And that affidavit was prepared for you by the attorneys for Kerr McGee, was it not?

A It was, at their request.

Q Yes. And they told you it was in connection with that litigation?

A Yes.

Q Now, in connection with that litigation, there were depositions taken, were there not, testimony given before trial?

A (No response.)

THE COURT: Do you know what that means?

jge

Brooke - cross

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THE WITNESS: No. I'm sorry.

Q Sorry.

Did it come to your attention that there was testimony given under oath prior to the trial? For instance, Mrs. Brooke, what the lawyers call a deposition, where someone testifies? You are not aware of that?

A I wasn't aware of that, no. We did not discuss this in great detail, because it had nothing to do with me.

Q Well, do you remember back on April 10th, 1974, last year, that some lawyers came to your home in Oklahoma?

A Unfortunately, yes. Two days before my husband died.

Q And was that for the purpose of taking his testimony under oath?

A Yes.

Q If I may use the word deposition for that --

A I see. I'm so sorry.

Q I believe yesterday you told us that Mr. Brooke passed away on April 12th, 1974?

A He did, two days after he gave what you call -- the deposition?

Q The deposition, yes. Now, when he gave that deposition, of course he was very gravely ill, was he not?

jge

Brooke - cross

541

1 jge  
2 A He had been under morphia for a month and the  
3 doctors had told me that he was in semi-coma for about two  
4 weeks. He was only lucid very occasionally.

5 Q And you strongly felt that that deposition was  
6 completely unnecessary, did you not?

7 A I certainly did. I was very much against it.

8 Q And it was your impression that it was Mr.  
9 Leonard's lawyer who had asked for that?

10 A I didn't know who had asked for it.

11 Q Did the attorneys for Kerr McGee ever tell you  
12 that they insisted on that deposition over the objection of  
13 Mr. Leonard?

14 A No, they never discussed this with me. I've had  
15 very little contact with Kerr McGee since my husband died.

16 Q And do you know a man by the name of William  
17 Schurtman?

18 A I met him on one occasion at the 21 Club in the  
19 company of Mr. Leonard and my husband.

20 Q And he was also at your home on April 10th,  
21 1974?

22 A He came down, yes.

23 Q And that was in Oklahoma?

24 A In Oklahoma City.

25 Q And were you aware that under the terms of the

jge

Brooke - cross

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testimony which was to be taken that he also was to ask questions of your husband?

A I had no idea.

I wasn't present.

Q Now, sometime after Mr. Brooke passed away, the attorneys for Kerr McGee asked you to prepare a document, did they not?

A Yes, they did.

Q And do you have that document with you today, Mrs. Brooke?

A My own written?

Q Yes, ma'am.

A I don't have it here. I'm very sorry.

MR. MAC DONALD: I have it.

A (Continuing) I think you have a copy yourself.

Q Yes, I do have a copy.

MR. MAC DONALD: This is the original.

(Handing.)

MR. TIGUE: Let the record reflect that I am marking as Defendant's Exhibit AF, four handwritten pages which Mr. MacDonald just supplied to me, and I am marking a third piece of paper, which is Defendant's Exhibit AG, that Mr. MacDonald has also given to me.

Q Mrs. Brooke, is Defendant's Exhibit AF the

jge

Brooke - cross

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1  
2 handwritten notes of the document the attorneys for Kerr  
3 McGee asked you to write?

4 A This is the handwritten.

5 Q I see. And Defendant's Exhibit AG, is that the  
6 draft of an affidavit which we have called AE?

7 A This is, yes.

8 MR. TIGUE: I offer in evidence, your Honor,  
9 Defendant's Exhibit AF and AG.

10 MR. MAC DONALD: No objection.

11 THE COURT: Received.

xx 12 (Defendant's Exhibit AF and AG for identification,  
13 were received in evidence.

14 Q Now, Mrs. Brooke, would you please tell us how  
15 it came about that you wrote up the document which is AF,  
16 the one in the center?

17 A I was asked by the attorneys of Kerr McGee to  
18 write my recollections and the fact that I listened in to  
19 two telephone conversations. My husband had already written  
20 these notes in full when he was in good health, so they  
21 knew that I had listened into these telephone conversations.

22 I wrote this out very soon after my husband  
23 died. I wrote it in about ten minutes. I didn't think that  
24 it was relevant to the Kerr McGee suit at all.

25 Q Did the attorneys for Kerr McGee tell you that

jge

Brooke - cross

544

1 they wanted you to sign an affidavit in the Leonard- Kerr  
2 McGee litigation?  
3

4 A They said that they would like me to do this since  
5 my husband was -- had died and they felt that I as his  
6 wife should do this.

7 Q Would you tell us how long after April 12th this  
8 was written?

9 A It was written in May.

10 Q The final affidavit was dated May 22nd. Could  
11 you use that as a frame of reference as to when the hand-  
12 written notes, which are Defendant's Exhibit AF, were  
13 written?

14 A A few days before.

15 Q And before you wrote Defendant's Exhibit AF --

16 A This is my handwritten one?

17 Q Yes, the one in front of you. There is a little  
18 tag on the top there which is a means for identifying it.

19 The handwritten notes AF, before you wrote that  
20 in ten minutes, you had an opportunity to review the  
21 complete file of the Kerr McGee litigation, did you not?

22 A No. I did not read it in full. It was very,  
23 very thick and I can honestly say I was not in the least  
24 bit interested in the case at all. So I didn't want to  
25 spend any time on it.

1 jge

2 Q I am having a little difficulty reading here.  
3 Would you please read the first paragraph of your notes?

4 A Well, it says, "Having read the complete file  
5 on the meetings and telephone conversations between Jackson  
6 Leonard and my late husband, John L. C. Brooke, my comments  
7 are as follows:"

8 But I didn't read it in full because that  
9 would have taken days, believe me.

10 Q The document that you did look at, Mrs. Brooke,  
11 that includes the depositions that we used of Mr. Leonard  
12 in connection with that case?

13 A I hadn't seen it at the time. Subsequently I did.

14 Q And when were you shown it subsequently, madam?

15 A After I wrote this.

16 Q Can you tell us when, please?

17 A I have no idea, quite honestly, no. I was  
18 under very great stress at that time. My husband had just  
19 died.

20 Q Would it have been like within six months? We  
21 are talking about May of 1974, and this is now about eight  
22 or nine months later. Could you give us just a general time  
23 when you read Mr. Leonard's deposition?

24 A Oh, it was before, about October.

25 Q Can you tell us how you came to read that? I

mean who showed it to you and under what circumstances?

A One of the attorneys of Kerr McGee showed it to me.

Q And did he say for what purpose he had shown it to you?

A Just to -- well, because he wondered if I would be interested in the comments that my husband had made on Mr. Leonard's -- deposition?

Q Yes, madam, deposition.

A Right.

Q And you read it.

A Yes, I did.

Q And that came to some 6,000 pages, did it not?

A Oh, heavens no. This was just a small -- these comments that I read were only, I think, a few pages, the particular part that might have been of interest to me.

Q You were shown a portion, then, of the total deposition?

A Yes.

Q Could you tell us when the first time was that it was indicated to you that you might be a witness in this case?

A Yes. The beginning of December, last year, '74.

Q And other than the conversations you had with

jge

Brooke - cross

547

1  
2 Mr. MacDonald, did the attorneys for Kerr McGee indicate  
3 to you that you might be a witness in this case?

4 A They had no idea, I don't think, that there was  
5 any case, I mean, that there was this case.

6 Q Are you making an assumption or did they tell  
7 you that they were unaware of a criminal case against  
8 Mr. Leonard?

9 A I don't think they did know.

10 Q Now, when you were asked to testify in this case,  
11 you called an attorney, did you not?

12 A Yes.

13 Q And was that one of Kerr McGee's attorneys?

14 A No. I twas my own private attorney.

15 Q And what was his name?

16 A John Edwards.

17 Q And then thereafter you called the attorney for  
18 Kerr McGee, did you not?

19 A On a friendly basis. He is a personal friend.  
20 Mr. Robert Walsh.

21 Q And Mr. Robert Walsh is one of the attorneys  
22 who is handling the litigation which we call Leonard versus  
23 Kerr McGee, is that right?

24 A He is.

25 Q And he was the attorney who showed you the depo-

jge

Brooke - cross

548

sitions of Mr. Leonard?

A Part of it.

Q And he told you that you should come and give as much cooperation in this case as was necessary under the circumstances, did he not?

A He said that he would leave it completely to me. But since I was subpoenaed, I felt that I should appear.

Q Yes. And in addition to that he told you, did he not, "Come to New York and give as much cooperation as necessary under the circumstances."

A He didn't tell me.

Q He said that, though, did he not?

A He just said, "If you feel that you have to, then go."

MR. TIGUE: I wonder if I might as Mrs. Brooke to read her three-page memorandum, because I frankly have difficulty reading her handwriting. It is in evidence.

A You want me to read it?

THE COURT: Don't you have the original?

MR. TIGUE: I do, your Honor, but --

THE COURT: You mean into the record?

MR. TIGUE: Or to the jury. I'll try to read it.

THE COURT: I don't really see any need for that.

jge

Brocke - cross

549

I think it is rather clear.

THE WITNESS: I have no interest in Kerr McGee case.

THE COURT: If you look at the original -- I don't think it needs be read into the record at this point.

Q Could you take a look at your handwritten notes, which are Defendant's Exhibit AF? You discuss in there this meeting that you had with Mr. Leonard and Mrs. Leonard.

A Which page?

Q I believe it is on the second page.

A At the top?

Q The part where Mr. Leonard says he had a Swiss bank account. Would you read that portion, please.

A From "Mr. Leonard was extremely anxious for my husband to join him in business." Shall I go on from there?

Q Yes.

A "And many tempting offers were made, namely, a check for \$10,000, which Jack refused."

This was offered at the 21 Club.

mpe

Brooke - cross

550

Q Yes, now, in the margin, does that say, "Didn't hear or see"?

A I didn't. I was not present.

Q Will you please continue in that paragraph.

A And subsequently at their own apartment, Mr. Leonard's apartment, that is, one evening I was brought into the conversation and told by Mr. Leonard that I would not settle in Oklahoma and could I not persuade Jack -- my husband -- to join him in business and live in an apartment he owns at Sutton Place, plus \$100,000, any of which he would deposit in a Swiss bank, making it easier for me to return to Europe to see my children.

This latter offer we made in writing, but unfortunately Jack, my husband, threw it in his waste basket at the Plaza.

This I did say.

THE COURT: All right. That's enough. There's no question.

Q Now, that is the end of the discussion, isn't it, about the meeting which took place in Mr. Leonard's apartment, is that right?

A That is the end of my written --

Q Yes. That's the question. And when you wrote Defendant's Exhibit AF, your handwritten notes, you didn't

mpe

Brooke - cross

551

1 put anything in there where Mr. Leonard said he has a Swiss  
2 bank account, did you?  
3

4 A No, I did not, but I was asked, having written  
5 this, to remember more and write literally everything that  
6 I can remember about my meetings with Mr. Leonard, and that  
7 is why my final affidavit is here, because I then remembered  
8 and wrote in full -- I didn't write, I told in full, every-  
9 thing that I recall. I didn't think initially that it was  
10 necessary.

11 Q You didn't regard it as important for relating  
12 that conversation for your purposes?

13 A I didn't think it was important for me or for  
14 Kerr McGee. My statement surely will not help them in any  
15 way.

16 Q You took defendant's Exhibit AF, your handwritten  
17 notes, to the lawyers for Kerr McGee, did you not?

18 A I didn't take them. They collected them.

19 Q They came to your home?

20 A Yes.

21 Q And then did there come a time when you went to  
22 their office?

23 A No.

24 Q Did they come back to your home?

25 A No. This was over the phone. The time that they

mpe

Brooke - cross

552

came to my home was when the final affidavit -- affidavit?

THE COURT: That's right.

Q Yes.

A Yes -- it was typed, and Mr. Walsh and his secretary -- and you will see that she is a witness, and that was when I signed it.

Q After the handwritten notes were picked up, you then talked to the attorneys of Kerr McGee on the telephone, is that right?

A One, yes.

Q Who was that?

A Mr. Walsh.

Q And --

A On a friendly basis.

Q And did he suggest -- was he the one who suggested that perhaps Mr. Leonard had an account of his own?

A No.

Q The first mention of that came from you, is that correct?

A Of course.

Q Now, there is another exhibit before you -- let me see if I can find it, so a copy as well -- that is Defendant's Exhibit AG in evidence. That is the intermediate draft, isn't it?

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A It is.

Q And if you look at the last page, you will notice that it's typed in "May 22, 1974."

A It is.

Q Was that prepared for your signature, and then you supplied additional information on that date?

A I haven't -- I have not read this --

Q Will you take a minute, please --

A -- because it is very similar to this one, but it wasn't complete and not as accurate as I wished it to be. If you will see, in paragraph 7, there are two lines which aren't written in.

Q Yes. And this was prepared for your review and you looked at the draft of the affidavit, is that right?

A I did.

Q And you gave additional information?

A I didn't give very much additional information as I can recall, but I did say that this was incomplete, and I'm not the type of person who signs things that aren't complete and accurate.

Q Now, I notice between the draft and the final, the date November 15, 1970, has been deleted.

A What?

Q Let me see if I can help you.

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A November 15, 1970.

Q Yes, ma'am.

You will notice it was in the draft and wasn't in the final.

A Quite, because that was a Sunday night, and in fact I was not at that meeting. Mr. Leonard had my husband to dinner, and I was at that time still in England.

Q You determined those facts when you were given the draft affidavit, is that right?

A Yes.

Q In other words, you were asked to sign it or to confirm it, and you said November 15, 1970 is incorrect, "because I was in England."

A Yes. My passport will show that.

Q Did you consult your passport when the affidavit was presented to you?

A Yes.

Q And you told the attorneys that they put a wrong date in there, is that correct?

A Yes.

Q The attorneys were the people who put the dates in here, were they not?

A No, the most -- apart from that one date -- well, you see, they consulted with my husband's secretary, who had

mpe

Brooke - cross

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his diary, and she gave the November 15th date, but I was not present at that -- at that meeting.

Q And then I noticed there's a date down there of February 22, 1971. Do you know whether or not --

A 22, 1971?

Q Yes. If you look at the affidavit. The draft and the final, in both.

A The final one?

Q Well, let's look at the final one, February 22, 1971.

A Yes.

Q Do you know whether Jackson Leonard was in Sidney, Australia, during that period?

A Well, if I met with him he must have been in New York.

Q Now, if you will go back to your notes for a minute, Mrs. Brooke -- that again is Exhibit AF -- I notice at the end you make the following date: "But I would like to say that both Mr. and Mrs. Jackson Leonard have always been kind and friendly toward me."

A That's indeed true.

Q Yes. And that was deleted, was it not, when the affidavit was prepared?

A I think that's -- yes, it was, and I do recall

mpe

Brooke - cross

556

1  
2 that I didn't want this deleted, but legally my own writing  
3 was completely personal, but obviously in court, people  
4 don't want to hear personal things.

5 Q And the attorneys thought it would be better to  
6 remove it, did they not? They told you that?

7 A Yes.

8 Q I notice in the final affidavit in paragraph 3,  
9 there's a reference to Mr. Leonard's wife as a charming  
10 girl.

11 Did they ask to have that deleted also?

12 A Yes, and I said that I didn't want this deleted.

13 Q Now, if you will look at the final affidavit,  
14 paragraph 6 --

15 A 6.

16 Q Yes, ma'am. And if you will read the third  
17 sentence in: This is the meeting of September 20, 1971,  
18 is that correct?

19 A That's right.

20 Q And --

21 A My late husband and I again met with Mr. Leonard  
22 at the Blue 21. Mr. Schurtman was present.

23 Q You needn't read it. I am going to read a sen-  
24 tence and ask you a question.

25 THE COURT: Mr. Tigue wants to ask you a ques-

1 mpe

Brooke - cross

557

2 tion.

3 THE WITNESS: I'm sorry. I thought you said you  
4 wanted me to read it.

5 Q I am sorry, I can't make myself clear. The third  
6 sentence said, "Mr. Leonard talked mostly of the alimony  
7 he was paying his former wife and I understood that Mr.  
8 Schurtman had handled all of Mr. Leonard's divorce proceed-  
9 ings and was presently handling a violation on the Rivera,  
10 in which his wife was concerned."

11 A That's right. That's written here.

12 Q That was not in your original handwritten notes,  
13 was it?

14 A No, because -- because, as I say, I just wrote  
15 this very quickly, and I didn't write everything that was  
16 said.

17 Q And it was the attorneys who asked that that be  
18 put in?

19 A No. They -- they didn't ask that it be put in.  
20 They said, "Will you please remember and tell us everything  
21 that -- that you can remember that was said between Mr.  
22 Leonard, Mrs. Leonard, Mr. Schurtman" -- my husband and  
23 myself.

24 Q Did Mr. Walsh indicate that you should pay par-  
25 ticular attention to information that maybe derogatory to

mpe

Brooke - cross

558

1  
2 Mr. Leonard?

3 A No.

4 Q You knew that the information you were giving  
5 was going to be part of an affidavit filed in this very  
6 court, didn't you?

7 A In this courthouse?

8 Q Yes.

9 A No, I didn't.

10 Q Did you have any discussion with the attorneys  
11 about the caption which says United States District Court,  
12 Southern District of New York?

13 A Where is this?

14 THE COURT: He is drawing your attention to  
15 what's written at the very top, Mrs. Brooke.

16 A Yes, but I didn't think that my affidavit would  
17 be of any interest to them whatsoever, and I still don't  
18 think it would be, quite honestly.

19 Q Did Mr. Walsh tell you the use to which your  
20 affidavit would be put?

21 A No. He didn't. It was merely --I can't remember  
22 exactly what he said, but he said it was merely a formality  
23 that I have this written out.

24 Q Then did you say this morning, Mrs. Brooke, that  
25 you met Mr. Leonard for the first time in November of 1970?

1

2

A It was sometime in '70.

3

Q You have no specific recollection of November?

4

A It certainly wasn't November 15th.

5

Q Yes.

6

In your handwritten notes actually there are no dates except the two telephone calls which you overheard between Mr. Leonard and Mr. Brooke, is that correct?

9

A That's right. I am not very good at dates, as I say.

10

11

Q And really it was the attorneys who assembled all the dates and put them in your affidavit, is that right?

12

13

A I am -- I also rang my husband's former secretary -- because he was dead -- and confirmed with her his diary as near as possible, so I could be more accurate?

14

15

16

Q And it was the attorneys really who were insisting on the precision of dates, if they could, is that correct?

17

18

A They weren't pressing me.

19

20

Q Did you object when you inserted the dates in because you didn't know, or you didn't know if they were accurate?

21

22

23

A I didn't object, except for the November the 15th one.

24

25

Q Before you wrote your handwritten notes, you did

mpe

Brooke - cross

560

1  
2 look at some of the files, didn't you, of the Kerr-McGee  
3 litigation?

4 A I just had the two telephone conversations, the  
5 notes of which my husband had typed out.

6 Q And did they also show you the deposition or  
7 the sworn testimony of Mr. Brooke, which was taken on  
8 April 10th?

9 A No.

10 Q Let me show you a copy.

11 A No. I have never read it until you showed it  
12 to me yesterday.

13 Q This is Defendant's Exhibit AH that I am referring  
14 to. You have never read it before?

15 A No, I have not read it, because --

16 THE COURT: Well, that's an answer.

17 MR. TIGUE: Yes.

18 Q Would it refresh your recollection if I indicated  
19 on the last page when it was typed up? Would it refresh  
20 your recollection?

21 THE COURT: As to what?

22 MR. TIGUE: As to whether or not she recalls  
23 actually having read this, your Honor.

24 Q Will you tell us if that refreshes your recollection  
25 as to whether or not that was one of the documents

1 mpe  
2 that you referred to in your handwritten notes when you said  
3 you had read the entire file?

4 A No, I hadn't read it.

5 Q Now, with respect to the conversation that was  
6 had at Mr. Leonard's apartment, would you agree with this  
7 statement.

8 "Do you recall what was said specifically about  
9 conversations, if anything".

10 MR. MAC DONALD: Are you reading from AH?

11 MR. TIGUE: I am reading a statement and asking  
12 the witness if that statement refreshes her recollection.  
13 May we approach the bench, your Honor?

14 THE COURT: In that form I would sustain an  
15 objection.

16 Q Do you agree that what really happened is that  
17 there was a discussion about depositing money in a bank in  
18 Australia rather than Switzerland?

19 A Certainly not. It was Switzerland.

20 Q Would you take a look at Defendant's Exhibit AH  
21 again, the affidavit, and please take a minute to read this,  
22 if you would, and tell us if that refreshes your recol-  
23 lection.

24 THE COURT: The objection is sustained. There's  
25 no recollection to be refreshed, Mr. Tigue. She has a

mpe

Brooke - cross

561A

recollection.

MR. TIGUE: May I have an additional minute  
to read this document?

THE COURT: You may.

(Pause.)

jge

Brooke - cross

562

THE COURT: Ladies and gentlemen, due to the length of the morning, we will take the first of two very short recesses at this moment.

(Recess.)

MR. TIGUE: May I proceed, your Honor.

THE COURT: You may.

BY MR. TIGUE:

Q I'm somewhat confused, Mrs. Brooke.

Would you fix as best you can, the date that you were in Mr. Leonard's apartment with Mrs. Leonard and Mr. Brooke?

A Yes, I can.

It was towards the end of July. I recall it because my daughter was visiting with me.

Q And it is impossible to fix any particular date in July, is that correct?

A I cannot recall the exact date. I think she arrived on June the 30th and she was here for about a month. So it was towards the end of July.

Q The first time that you were asked about this meeting, you said it occurred on November 15, 1970, did you not, when you talked to the Kerr McGee attorneys?

A No, I don't say that.

Q Do you have your draft affidavit? That is

jge

Brooke - cross

563

1  
2 Defendant's Exhibit AG.

3 A I told them that this was wrong.

4 Q This first sentence in paragraph 4, where it  
5 says, "My first meeting with Mr. Leonard took place on  
6 approximately November 15, 1970 at Mr. Leonard's apart-  
7 ment in New York."

8 You were not --

9 A Where does this say?

10 Q I'm sorry. This is Defendant's AG, the draft,  
11 in paragraph 4.

12 A 4?

13 Q I just read the first sentence. Would you like  
14 me to reread that?

15 A Yes. And this was not right.

16 Q And that was not something that you had told  
17 the attorneys?

18 A No.

19 Q It didn't happen that you told them that and then  
20 it was discovered that you were not in the country then?

21 A No. I said, when I read it, "This is not right,"  
22 because I didn't meet him on the 15th of November.

23 Q Didn't you ask the attorney where he got that  
24 information from?

25 A No, I didn't. I wasn't interested.

jge

Brooke - cross

564

Q You told him to change it in any case, is that right?

A I told him, yes.

Q And in paragraph 2, that same date is deleted and then in paragraph 4 that date is also deleted, is that right? When I say "that date" --

A The same one you are looking at now?

Q Yes, ma'am, November 15, 1970, yes.

And you said that there was one other occasion that you met with him but you do not recall the date, is that right?

A That's right. As you now know, I am no good at dates.

Q Now, this conversation that Mr. Leonard and Mr. Brooke were having in July of '71 in his apartment was essentially a business conversation where they were talking about the offers and counter offers to go together, is that right?

A This is correct.

Q And if I may just read from the bottom of page 1 of your handwritten notes, it says, "My meetings with Mr. Leonard were always social and, apart from two occasions, his wife was always present, a charming girl, and we seemed to have much in common to discuss. Therefore we were only barely aware of our husband's conversations."

1 jge  
2 Was that referring also the July 1971 conver-  
3 sation?

4 A No, because I was brought into this by Mr.  
5 Leonard, who I think said in some statement that we had  
6 recently moved to Oklahoma City, and he was very anxious  
7 that my husband join him in business. And so this is why I  
8 was brought into the conversation.

9 Q Was this the very first occasion that you had  
10 met Mr. Leonard?

11 A In his apartment?

12 Q Yes.

13 A No.

14 Q Were you the person who supplied the information  
15 for the draft affidavit which said -- again I'm on para-  
16 graph 4 -- "My first meeting with Mr. Leonard took place  
17 on approximately November 15."

18 Was it your statement to the attorneys that it  
19 was at the first time you met Mr. Leonard that he told you  
20 he had a Swiss bank account?

21 A This was not the first time I met him that he said  
22 this, no.

23 Q And you had not told the attorneys for Kerr  
24 McGee that?

25 A No, I had not.

jge

Brooke - cross

566

1  
2 Q Now, if I can go to the discussion about placing  
3 \$100,000 in a Swiss bank account, were handwritten notes  
4 I believe say that "any portion of that \$100,000 could be  
5 deposited into the Swiss bank account." Is that right?

6 A That's right.

7 Q And then when the affidavits were drawn up, that  
8 was changed to a 50-50 split, is that right?

9 A That's right.

10 Q Could you tell us how that came about?

11 A Because I do recall that the sum of 50,000 and  
12 50,000 was discussed.

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1 mpe  
2 Q You didn't recall that when you wrote the hand-  
3 written notes?

4 A I didn't think it was relevant at that time.

5 Q Did the attorneys suggest that perhaps a portion  
6 of the \$100,000 would have to be recorded on the books and  
7 therefore maybe the conversation wasn't any portion of the  
8 \$100,000 would be paid for a Swiss bank account?

9 A As I said previously, I was asked to refresh  
10 my memory and be more explicit in everything, so therefore  
11 I did go back in my memory and remembered as much as possi-  
12 ble.

13 Q Now, before you testified yesterday, Mrs. Brooke,  
14 did you have occasion to read your handwritten notes?

15 A Before yesterday?

16 Q Yes, ma'am.

17 A No.

18 Q Did you have occasion to read your final  
19 affidavit?

20 A I went through it, yes.

21 Q Did you have occasion to read the draft affi-  
22 davit?

23 A This final one?

24 THE COURT: No, the draft.

25 Q The draft.

1 THE COURT: The draft that the attorneys pre-  
2 pared, in which you made corrections, deletions and so on.

3 THE WITNESS: I am so sorry --

4 THE COURT: This is Exhibit AG, which we call the  
5 draft.  
6

7 Q AG:

8 A No, I did not.

9 Q Was Mr. MacDonald supplied a copy of the final  
10 affidavit -- I better get my numbers here -- that's AE  
11 before you, the final affidavit.

12 A Yes.

13 Q And you went over that briefly with him?

14 A Yes.

15 Q But you didn't give him, did you, a copy of  
16 your handwritten notes?

17 A Yes.

18 THE COURT: Yes, you did not.

19 Q All right. Would you clear that up?

20 I -- I am not clear --

21 A He did not have them. I --

22 Q You never showed it to him, did you?

23 A I don't recall that I did.

24 Q And you didn't mention it to him?

25 A Yes. I remember saying in December that I had

1 written these notes very quickly.

2 Q Did you have them with you when you came in Decem-  
3 ber?  
4

5 A No, I don't think I did, no.

6 Q After you gave the originals to the attorneys for  
7 Kerr McGee, how did you get them back in your possession,  
8 the originals?

9 The ones that are before you.

10 A I requested to have them back.

11 Q Could you tell us when you did that?

12 A After the final affidavit.

13 Q Would that be when you were preparing --

14 A That was in May, was it?

15 Q Yes.

16 Q You requested the original handwritten notes to  
17 be given back to you in May. Was there a particular reason  
18 for that?

19 A I felt that I would like to have them, since I  
20 had written them, and it was to do with occasions that my  
21 late husband and I had had. I just wanted them for personal  
22 reasons.

23 Q Could you tell us when the last time it was that  
24 you spoke with Mr. Walsh? I believe he is the attorney  
25 for Kerr McGee?

mpe

Brooke - cross

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A Yesterday.

Q Was that before or after you testified?

A After. It was on a purely personal basis. He wanted to inquire of my health.

Q But it's perfectly clear that you never showed the handwritten notes -- it's perfectly clear, is it not, that you never showed Mr. MacDonald the handwritten notes or the draft affidavit, is that correct?

A Until yesterday, was it --

Q Yes. I am sorry. I misspoke. Before you testified on direct examination --

A He had not seen them.

Q Yes.

Now, do you recall, back last April, Mr. Leonard called you and told you that he wanted to see Mr. Brooke and asked about his state of health?

A That's correct.

Q And did you refuse him an opportunity to visit Mr. Brooke?

A I did not refuse. I said that it was really not possible, because it was two days before my husband died and he wouldn't have recognized Mr. Leonard, anyway.

Q When you came here in December, a month ago, did you call Mr. Leonard on the telephone?

1 re

2 A No.

3 Q Did you call him on the telephone before you  
4 testified here yesterday?

5 A No.

6 MR. TIGUE: I have no further questions.

xx

7 REDIRECT EXAMINATION

8 BY MR. MAC DONALD:

9 Q On AG there's some handwriting in the upper left-  
10 hand corner. Did you place that handwriting there?

11 A Yes.

12 Q Does that include my telephone number and my  
13 address?

14 A It does.

15 Q And is it your recollection that you wrote that  
16 there during a telephone conversation that you and had  
17 prior to your first visit to New York in December of 1974?

18 A That's right.

19 Q I show you Government's Exhibit 95 for identifi-  
20 cation, together with -- I will just ask you if you can iden-  
21 tify 95 as being a Xerox of two pages of your now expired  
22 passport?

23 A That's right.

24 Q This morning, did you at my request, examine  
25 that passport and examine the visa issued by the United

mpe

Brooke -redirect

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1 States Embassy to y f the various entry and exit stamps?

2 A Yes.

3 Q In addition, did you examine two or three pages  
4 later, where a visa was issued to your daughter, Samantha,  
5 where it also bears an entry stamp?

6 A It does.

7 Q And at that time, did you have your recollection  
8 refreshed that your daughter Samantha was in the Plaza  
9 Hotel on the evening that you spent with Mr. Leonard and  
10 his wife in his apartment?

11 A That's right.

12 Q It is the date June 20th, not June 30th, 1971?

13 A That's the date that she entered the United  
14 States.

15 Q Do you have any recollection of how long she  
16 stayed on that visit?

17 A Approximately a month.

18 Q And did you enter with her and return to England  
19 with her on that trip?

20 A I did.

21 Q So was it on the entry end of the 30 days that  
22 you met with Mr. Leonard or the exit end?

23 A The exit. It was the night before I left for  
24 England.  
25

mpe

Brooke - redirect

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MR. MAC DONALD: Nothing further.

MR. TIGUE: No questions.

MR. MAC DONALD: I will offer 95.

MR. TIGUE: No objection.

THE COURT: It may be received.

(Government's Exhibit 95 for identification,  
received in evidence.)

(Witness excused.)

MR. MAC DONALD: Government rests, your Honor.

THE COURT: All right.

Ladies and gentlemen, we will excuse you for a  
brief recess.)

(The jury left the courtroom.)

THE COURT: Motions.

MR. TIGUE: Yes, your Honor.

I have some, your Honor, if I may just have a  
minute.

May I proceed, your Honor?

THE COURT: You may.

MR. TIGUE: I would move, your Honor, to dis-  
miss the indictment and for a judgment of acquittal with  
respect to both counts of the indictment.

First, with respect to 1968, I believe that the  
Government has failed to prove venue. The testimony in

1 mpe

2 the case is that the tax return was prepared in New York  
3 and that in the ordinary course of business it was mailed to  
4 New Jersey, and the stamp of the income tax return itself  
5 shows that it was received in the Philadelphia, Pennsylvania  
6 office of the Internal Revenue Service. I hope to have,  
7 your Honor, a case, which I believe was by Judge Weinfeld,  
8 but frankly I spent a little time preparing the cross  
9 examination of Mrs. Brooke, and I apologize for not having  
10 that case, but my understanding of the law is that the  
11 crime is committed not by the preparation, as it is in  
12 income tax evasion cases --

13 THE COURT: This is addressed now to count 2?

14 MR. TIGUE: Yes, it is, your Honor.

15 THE COURT: Very well.

16 MR. TIGUE: The crime is committed when a person  
17 subscribes and makes the return. The term "make" has been  
18 judicially described to mean the actual filing and of  
19 course "subscribing" means to sign it.

20 There is no evidence where the tax return was  
21 signed. The only evidence is that it was mailed to New  
22 Jersey. The only possible inference would be that it was  
23 signed in New Jersey and no permissible inference that it  
24 was signed in the Southern District of New York.

25 The income tax evasion cases are against me on

UNITED STATES COURT OF APPEALS  
For the Second Circuit

United States of America,

Appellee,

**AFFIDAVIT  
OF SERVICE**

against

Jackson D. Leonard,

Defendant-Appellant.

On Appeal From the United States District Court  
For the Southern District of New York

STATE OF NEW YORK,  
COUNTY OF NEW YORK, ss.:

Charles Tynch, being duly sworn, deposes and says that he  
is over the age of 18 years, is not a party to the action, and resides  
at 2189 Pitkin Avenue, Brooklyn, New York  
That on July 27, 1976, he served two copies of the brief  
and one the Appendix  
on

Robert Fiske, Esq.  
United States Attorney for the  
Southern District of New York  
Attorney for Appellee  
Foley Square  
New York, New York

by delivering to and leaving same with a proper person or persons in  
charge of the office or offices at the above address or addresses during  
the usual business hours of said day.

Sworn to before me this  
27th day of July, 1976

*John V. Desposito*  
JOHN V. DESPOSITO  
Notary Public, State of New York  
No. 30-0932350  
Qualified in Nassau County  
Commission Expires March 30, 1977